93-806

Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1993

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REYNOLDS K. OHAI,

Petitioner,

v.

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS, et al.,

Respondents.

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On Petition for Review to the Supreme Court of the State of California

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PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Does the City of Santa Fe Springs' Ordinance 510, REDEVELOPMENT PLAN FOR OIL FIELD REDEVELOPMENT PROJECT, and its subsequent application by the Community Redevelopment Commission of the City of Santa Fe Springs, have the effect of denying appellant/petitioner substantially all of the use and enjoyment of his real property without just compensation?

2. Is the judgment of dismissal of the Second Amended complaint on technical State procedure, i.e., sustaining respondent's demurrer without leave to amend, adequate and independent from consideration of the federal question of taking without just compensation?

Parties to the Proceedings

The petitioner is Reynolds K. Ohai.

The respondents are:

Community Development Commission for the City of Santa Fe Springs,
City of Santa Fe Springs.

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Reynolds K. Ohai, an individual property owner within the City of Santa Fe Springs, California, respectfully petitions for a writ of certiorari to review the judgment of dismissal of the Superior Court of the County of Los Angeles, as affirmed by the Stated of California Court of Appeals, Second District.

Opinions Below

The opinion of the Court of Appcals is included herein at App. 8-14.[1] The denial of Ohai's Petition for Review to the California Supreme Court is set forth at App. 7.

Jurisdiction

The opinion of the Court of Appeals was entered on May 26, 1993, the date the court's opinion was filed. The California Supreme Court's denial of the Petition for Review was entered and filed on August 11, 1993. The jurisdiction of this court in invoked under 28 U.S.C. § 1257(3).

Constitutional and Statutory Provisions

The Fifth Amendment to the United States Constitution provides, in part: " . . . [N]or shall private property be taken for public use, without just compensation." The Fourteenth Amendment provides, in part: " . . . [N]or shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of all laws." The Second Amended Redevelopment Plan, For Oil Field Redevelopment Project, adopted by Ordinance No. 510, December 14, 1976,[2] will be referred to as

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[1] References to "App." are to the Appendix of this petition.

[2] The original Redevelopment Plan was adopted by Ordinance No. 441, August 9, 1973, and which is the Plan invoked by the City Redevelopment Commission to prohibit Ohai from improving his

"Plan," which is set forth in its entirety at App. 101-111.

Statement

1. THE CITY. Santa Fe Springs, located in the Southeast portion of Los Angeles County, refers to itself as "primarily an industrially-oriented city.[3] The property subject to the Plan is bounded by Norwalk Boulevard on the West, Clark Street on the South, Bloomfield Avenue on the East, and Telegraph Road on the North.[4] The surrounding area on all sides is largely developed with industrial/commercial properties, which are landscaped and manicured in appearance. As may be seen by the photos set forth in App. 4-6,[5] the City has screened the very busy and heavily traveled Telegraph Road.

Within the area of the Plan is the real property owned by Ohai which fronts on Gardner Avenue, a

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property as set forth herein. The First Amended Redevelopment Plan was adopted by Ordinance No. 482, August 14, 1975.

[3] The City has a resident population of 16,416 compared with a private employment population of at least 53,709, or twice the resident population. (Source: City of Santa Fe Springs). (See also major features map, App. 2).

[4] It is to be noted that Norwalk Boulevard is a main artery through street for North/South traffic and Telegraph Road is a principal thoroughfare East/West, with substantial commuter traffic to the City of Los Angeles in lieu of the 1-5 Freeway. The neatly appointed/landscaped City Hall/Administration buildings are located just West of the project area on Telegraph Road.

[5] These and other photos included in the App. were taken by the petitioner's counsel at the time of submitting this document.

through East/West street from Norwalk Boulevard to Bloomfield Avenue, which he purchased in or about 1969,[6] for the purpose of erecting an industrial building thereon for his business, Hi-Lite Manufacturing Co., Inc., which was an approved use under the then existing City General Plan.

2. THE PLAN. The intention of the Plan is:

> "to eliminate and prevent the reoccurrence of blight in the Project area by a combination of actions which may include:
>
> 1. Installation, construction, reconstruction, realignment or expansion of streets, grade separations, utilities, noise barriers, open spaces, landscaping or other public improvements and facilities by public and/or private action.
>
> 2. The vacation and removal of certain streets and alleys . . .
> 4. Acquisition of certain real property . . ."
> (App. 107-108).

The City did nothing to implement the Plan within the period of adoption in 1973, to the time of terminating the Plan in 1989. (App. 90-99). (The pictures of the area comprising the Plan reveal the continued depreciated condition of the land and area). Additionally, the Plan contemplated that it is intended to be an owner participation project in that it provides, wherever

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[6] At the time of purchase, the investment-backed expectation of Ohai relied heavily upon the General Plan goals of the City to encourage and attract new industry. Source: General Plan, Id.

possible, owners of real property in the proposed project area to remain an owner participant in the redevelopment area. (App. 103).

The proposals of the Plan regarding land use include, inter alia, industrial and commercial buildings, with landscape screening and appearance improvement. (App. 105). The Plan also contemplated the acquisition of any rights-of-way needed for the installation or widening of those streets to be utilized within the Plan area, and:

> "their full improvement to their ultimate planned width in accordance with City standards. In addition certain existing dedicated street and alley rights-of-way may be vacated in order to facilitate the assembly of land of appropriate size for proper development. ***All existing street and alley rights-of-way not shown on the Map are intended to be vacated.***" (App. 107).

GARDNER AVENUE IS NOT SHOWN ON THE MAP. (App. 111).

The Plan contemplated the acquisition of real property located within the Project area by:

> " . . . gift, device, *exchange*, purchase, eminent domain, or any other lawful method. It is in the public interest and is necessary in order to eliminate the conditions requiring the redevelopment and in order to execute the Plan, for the power of eminent domain to be employed by the Agency to acquire real property in the Project Area." (App. 109).

3. The Subject Property. Ohai purchased the subject property in or about 1969. In 1973, after the original Plan had been adopted, Ohai attempted to obtain

a building permit for the construction of his industrial building on his Gardner Avenue property, but was denied the filing of such application on the basis that his property was on a street vacated under the Plan and his property therefore had no legal ingress/egress *for such use.*

In the alternative, the City officials began to discuss with him, both orally and in writing (App. 59-80) possible exchange for other property within the authority of the City, or outright purchase by the City.

After 15 years of frustration with the City's manipulation of his property rights, Ohai filed an application with the City for a building permit in 1988 (App. 79-80), which was denied (See App. page 86, last line of ¶ 2; page 88, line 2-3 of ¶ 2).

IN RECOMMENDING THE DENIAL, THE STAFF REPORT INSISTED THAT THE APPLICATION SHOULD BE DENIED:

> "*because it is not in furtherance of the adopted Redevelopment plan and is not pursuant to the goals of the adopted Redevelopment Plan for this area* (See App. 81, the last four lines of the first paragraph under the subheading "BACKGROUND") . . . *Gardner Avenue along with two other local streets in the Townsite area were designated to be vacated*[7] . . .*The proposed elimination of Gardner Avenue creates a* ***'landlock'*** *condition for Mr. Ohai's property. Because of the landlocked condition, a small development on the property would not be in*

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[7] GENERAL DEFINITIONS are included in the Plan but do not include a definition of the terms "vacate" or "vacation," which would have been applicable to the facts herein as to Gardner Avenue. (App. 103-104).

> *keeping with the goals of the Redevelopment Agency* . . . (and) at a future date [the Agency] would be placed in the position to acquire the property and pay the 'new' improvements placed on the property . . ."[8] (App. 82, ¶ 2).

The denial of the application advised Mr. Ohai that the provisions of California Code of Civil Procedure, Section 1094.6 would govern judicial review of the denial decision. (App. 87). However, he was not advised as to his right to appeal, if any.

Thereafter, Ohai filed the original pleading in this action for Writ of (Administrative) Mandate on October 14, 1988, under Code of Civil Procedure Section 1094.6, which set forth specific grounds for the granting of relief to Ohai, to wit:

> "a. Petitioner contended that the denial of the permit application was an unlawful exercise of the City to regulate the use of his property. The vacating "on paper" of Gardner Avenue appears to be an exercise of the power of eminent domain, without the procedure required for such an exercise of said power.[9] The City has effectively "landlocked Ohai's property since Gardner Avenue is no longer a source of ingress/egress to his

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[8] The Staff report also repeated the "long history of discussions with Mr. Ohai concerning his property" giving credibility to the oral denial of his request to file an application for building permit in 1973. (App. 82, ¶ 3, lines 1-2).

[9] Since the definitions included in the Plan do not define the word "vacate" the denial of the building permit demonstrated the intended meaning that all properties fronting on Gardner Avenue were landlocked after the adoption of the original Plan in 1973.

property, which has the effect of denial of his use and enjoyment of his property, which is a taking without compensation. Not only is the property without ingress/egress as such existed at the time of purchase, but there is not timetable for any further action by the City to finally resolve the matter;

b. The City, in denying the application, is acting on the premise that Gardner Avenue is not a public street from which Ohai has access to his property, but the City has taken no action to officially close Gardner Avenue.[10] Ohai further contended that the provisions of the Plan to vacate Gardner Avenue is an unconstitutional taking in violation of his due process rights, since the status of Gardner Avenue, which is the only access to his property, is a taking within the meaning of U.S. Constitution, Fourteenth Amendment. Gardner Avenue is still a public street in that there has been no formal closing thereof, nor are barriers present to prevent the public from using the same, however, it is not a public street for purpose of Ohai's access for building permit purposes.

This same question was before the United States Supreme Court in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1986) 482 U.S. 304 (96 L.Ed.2d 250, 107 S.Ct.2378) (*First Lutheran)*, which resulted in the bottom line holding that if a regulatory body attempts to exercise a lawful

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[10] By taking this position, the City can avoid the costs and expenses of eminent domain proceedings at the expense of the loss of use and enjoyment of their properties by the owners fronting on Gardner.

authority, but which results in a denial of use of the property by an owner, then that is a "taking," and compensation must be paid.

The City demurred to the Writ which was sustained with thirty days leave to amend. Unfortunately, the transcript of the proceeding was mysteriously unavailable,[11] however, a NOTICE OF RULING (App. 45-46) was sent to opposing counsel by counsel for Ohai, which set forth that the Petition for Writ of Mandate was denied, and the demurrer sustained, both rulings on the basis that the Petitioner (Ohai) has not exhausted his administrative remedies for writ proceedings to go forward. Additionally, the court ordered that the Petitioner has 30 days leave to amend to set forth a cause of action in inverse condemnation since the denial of the permit reflects an issue of a taking of property requiring just compensation, and further administrative proceedings appear futile. (App. 46, ¶ 2).

Thereafter, Ohai filed his First Amended Complaint on December 29, 1988, which was a complaint in inverse condemnation based on the guidelines of *First Lutheran*, supra, that where a regulation takes all use of a property, the property owner is entitled, under the just compensation clause of the Fifth Amendment (as a matter of law) to compensation for the period before the courts finally determine that the regulation effects a "taking of property."

Again, the City demurred to this complaint, which was sustained on basis of "fails to state cause of action,"

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[11] Counsel paid the required transcription fees to the reporter, but when the time came for the transcript to go to the Court of Appeals for inclusion in the court record, the reporter could not be located, nor could the administration find the reporter's work papers, which were supposed to be filed with the Superior Court reporter's supervisor. (See App. 17).

with thirty days leave to amend. (App. 20, lines 5-6).

Thereafter, the City indicated to Ohai that it was terminating the Plan,[12] and that Gardner Avenue was no longer vacated, which would open the application for a building permit by Ohai for reconsideration upon certain conditions to be named. Ohai's desire was to secure the permit upon the same terms and conditions that such would have been issued in 1973, except for such conditions necessary for safety needs, e.g. earthquake, which he argued was fair since the delay lay at the feet of the City, therefore, such building code changes which had occurred over the past 15 years, e.g. set-back, on-site parking, street widening improvement, sewer hook-up fees/increases, etc., should be borne by the City, as well as the resurfacing of Gardner Avenue ***because it had reverted to little more than a potholed tar and dirt road.***

THE CITY DID NOT RECONSIDER AND INSTEAD REQUIRED CONDITIONS WHICH MADE THE PROJECT ECONOMICALLY IMPRACTICAL. (See App. 93-97, conditions 1-14).

Ohai further contended that the City should pay him the loss of the use and enjoyment of his property for the period from the denial of the building permit on 8/9/73 when the Plan was adopted to 4/7/89, when the Plan was terminated. A "potential" trade-off existed in

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[12] The decision by the City to terminate the Plan was due to a change in the status of Santa Fe Energy, the contemplated principal developer of the Project area. In the Staff recommendation to deny the Ohai permit, the Staff wrote: "Another goal of the Redevelopment Plan is to encourage the assemblage of the small lots into larger parcels for industrial development." (App. 82 ¶ 2).

The object of the City's position was to accumulate all of the individual small parcels including Ohai's property, and ultimately turn them over to a single large developer, i.e., Santa Fe Energy, for a one contractor development.

which the City might pay the costs of resurfacing Gardner Avenue and install the off-site improvements as well as any toxic waste tests required in 1989, which were not required in 1973, to offset said loss of Ohai. For this reason both counsel had stipulated to an open extension for the filing of the Second Amended Complaint. After an unproductive and lengthy discussion as to a negotiated resolution, Ohai filed his Second Amended Complaint on January 17, 1991, and which is the operative pleading in this case and petition.

The City again filed its demurrer to the Second Amended Complaint which was heard on June 19, 1991. The trial court sustained the demurrer without leave to amend without ruling on the federal question(s), to wit, whether or not the Plan and its subsequent application by the City denied Ohai his constitutional rights to just compensation and due process of law.

The court disregarded the liberal application of the protection of a plaintiff's right to a trial on the merits, historically allowed even up to the time of judgment.

Reasons for Granting the Writ

A. If Dismissal Is Permitted To Stand Independent Of Resolving The Federal Question, It Provides Unbridled State Regulatory Invasion Of Fifth And Fourteenth Amendment Rights.

The trial court held that plaintiff admitted that Gardner Avenue had not been closed in his Writ of Mandate and First Amended Complaint, (i) which precluded him from subsequently alleging the fact that Gardner Avenue was closed, (ii) that the complaint was time barred in that the first filing was some 15 years after the adoption of the Plan, and (iii) for failure to exhaust administrative remedies[13] and (iv) Res Judicata for failure to appeal the denial of the Writ.

The Court of Appeals opinion (hereafter "AO") (App. 18-40) appears to be based on the failure to state a cause(s) of action exclusively. The AO has no reference to the federal constitutional questions raised by the pleadings,[14] or the application, if any, of the Statute of

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[13] However, as stated above, p 9, in ruling on the Writ demurrer, the court concluded that further Administrative proceeding would be futile since the pleadings make it unlikely that any permit could be had under the Plan.

[14] The court indicated its position on the taking issue, to wit:
" . . . MR. PAULSON: I MEAN, IT (the sustaining of the demurrer without leave to amend) HAS THE EFFECT OF DENYING THE TAKING ISSUE AS EVER GETTING RIPE IN THE PLEADINGS.
THE COURT: WELL, THAT -- THERE IS A RULING ON THAT, I'VE INDICATED THAT THERE WAS NO REGULATORY TAKING."
(See bottom of page, App. 40 and top of App. 41).
The thrust of the court's ruling in sustaining the demurrer without

Limitations--both were strongly relied upon by the trial court in sustaining the demurrer without leave to amend.

The AO sets forth the standard on appeal for reviewing in California a demurrer without leave to amend as set forth in *Blank v. Kirwan* (1985) 39 C3d 311. The liberality generally applied in reading a pleading in the light most favorable to the plaintiff and the granting of leave to amend is overcome to prevent sham and untruthful plaintiff's a day in court. If this rule is incorrectly applied, it denies the good faith plaintiff relief on any theory. The respondent did not contend that the Second Amended Complaint was untruthful or sham; the respondent admitted the truthfulness of the allegations.[15]

The ruling in *Blank* is inapplicable and the ruling in *Gruenberg* and *Green* is the more appropriate reasoning to be applied in this instance would be the rule in *Gruenberg v. Aetna* (1973) 9 Cal 3d 566, 572, where the California Supreme Court states:

"We proceed to examine the complaint for its

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leave to amend is on the fact that it is futile for appellant to have additional opportunities to amend. The court ruled that there is no regulatory taking in the first place and that the complaint is time barred in the second place.

This being true, then such is an abuse of discretion under California procedural principles. A judge who has sustained a demurrer without leave to amend has no authority to pass on the merits of the case. (See WITKIN, CALIFORNIA PROCEDURE, Pleading, Section 942, at 383.)

[15] The respondent admitted:
"Gardner Street is a street that is mostly dirt with a little bit of asphalt here and there and was never really, in recent times at least, turned into a street up to proper standard." (App. 38, ¶ 2).

> **legal sufficiency according to the familiar well settled principles. . . . "A demurrer admits all material and issuable facts properly pleaded. . . . "In determining whether or not the complaint is sufficient, as against the demurrer, upon the ground that it does not state facts sufficient to constitute a cause of action, the rule is that <u>if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged.</u>" . . . " (Emphasis added.)**

In *Green v Palmer* (1860) 15 Cal 411, 414 (The leading case in California on pleading.) the court holds:

> "Facts only must be stated. This means . . . the facts as contradistinguished from the law, from argument, from hypothesis, and from evidence of the facts."

The elements are pleaded in the amended complaint by way of ultimate, rather than the improper evidentiary facts.

The approach in this case of using the demurrer as a tool for avoiding the issue of the taking without just compensation is novel and possibly unique. We have not been able to find cases where demurrer was the basis for denial of individual property owner(s) rights. The invalidation of the regulation was also undertaken by the

City herein on 4/7/89, which demonstrates the impact of the instant lawsuit on the City in light of *First Lutheran*, supra.[16]

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[16] The hurdles in California have placed a heavy burden on property owners to get very far in takings cases. Indeed, even First Lutheran Church--the plaintiff in the landmark case--did not realize the relief sought or awarded. The church had been prohibited from rebuilding a retreat in Tujunga Canyon after flash floods washed away several buildings in the area. After the case was remanded the Second District (the same Appeals Court as is present in this case) in Los Angeles decided a taking had not occurred because the regulation in question protected public safety. (Source: California State Bar publication; California Lawyer, William Fulton, Esq.)

Contrast the above with the results in South Carolina after the *Lucas*, supra, decision was announced by the United States Supreme Court. The U.S. Supreme Court held that South Carolina's statute could have so restricted Lucas' ability to use his land and that the restriction was within the meaning of the Fifth Amendment's just compensation clause. The matter was remanded to the South Carolina Supreme Court for further action. The South Carolina Supreme Court held--in an opinion that was short, sweet and quickly delivered-that the State had temporarily taken Lucas' property. The matter was then sent back to the trial court for a determination of the amount the State would have to pay for the four years of state-imposed stultification. Right before trial the case settled and the State of South Carolina now owns the property, and doesn't pretend to use the property to protect the environment, as it alleged all the way up to the Supreme Court against Lucas, but rather now seeks to develop the same. As long as the cost was borne by a private property owner, South Carolina evidently felt free to demand the last ounce of politically correct environmental flesh, i.e., don't use the property. As soon as the tables were turned, however, and it wasn't a single property owner who was asked to pick up the tab but the collectively taxed populace of South Carolina, environmental concerns apparently vanished in a sea of red ink. (Source of ff 15: Los Angeles Daily Journal, The PRACTITIONER, Michael E. Berger, ESQ. Note: Mr. Berger was the attorney for First Luthern in the U.S. Supreme Court proceedings.

The AO gave considerable importance to the fact that the original (Writ) and first amended pleadings had alleged that Gardner Avenue had not been closed. (App. 11, ff 2). The reasoning followed was that "material factual allegations in a verified pleading without adequate explanation will be considered by the court in ruling on a demurrer to the later pleading." [Citation] (App. 11-12).

The AO deemed fatal a supposed absence of explanation in the Second Amended Complaint as to Gardner Avenue's status of being closed/not closed. (App. 11-12).

The AO further claimed that the complaint could not be amended since appellant supposedly had not shown prior to oral argument how such could be accomplished. The AO stated that this argument cannot be raised for the first time on oral argument. (App. 13, ¶ 2). The AO further concluded that the plaintiff has not shown how the Second Amended Complaint can be further modified to state a cause of action and therefore affirmed the trial court's dismissal of the Second Amended Complaint without leave to amend. (App. 14).

SIMPLY PUT, THE COURT OF APPEAL GUARANTEED THAT PLAINTIFF COULD NOT AMEND HIS SECOND AMENDED COMPLAINT BY DENYING HIM THE OPPORTUNITY TO DO SO.

It is clear that the AO did not approach the decision with the idea of construing the pleading in the light most favorable to the plaintiff. The wording in the three pleadings specifically show that the same facts were pleaded which would satisfy any pleading requirement of facts sufficient to support a cause of action for taking without just compensation.

In the Writ of Mandate we were seeking an order from the court to compel the issuance of a building permit, not primarily a resolution of the taking issue,

which at that juncture of the case was the thrust of the case. Once the original trial court ruling was stated with remarks that it was futile to pursue the building permit in light of the property being landlocked by the Plan and gave 30 days leave to amend, it was appropriate to pursue the taking issue.

A review of the three pleadings as to a statement of ultimate facts contradicts the AO as to any insufficiency, to wit:

The original Writ pleads, in part:

> "As part of the project, as amended many time, Gardner Avenue in the Townsite area was designated to be vacated, however, the City took no action to officially close Gardner Avenue, which is still a public street which fronts on the subject property, and is the only exiting ingress/egress to the subject property.
>
> Commencing in about 1973 petitioner began to negotiate with the City of Santa Fe Springs (hereafter "City") for possible resolution to his right to use and enjoyment of his property, since the City indicated that he could not develop his property without securing a recognized access from another adjacent means. . . .
>
> However, petitioner does contend that the proposed project is suspect . . . *the vacating 'on paper' of Gardner appears to be an exercise of the power of eminent domain, without the procedure required for such an exercise of said power. The City has effectively 'landlocked' petitioner's property. . . . In other words, the effect of the 'vacating' of Gardner Avenue is to deny his use and enjoyment of his property which is a taking without just compensation . . .*

Respondents' taking is an unlawful exercise of an otherwise lawful power to condemn property for a public use, which caused damages to the petitioner . . . plus loss of use and enjoyment for more than 15 years . . . [ITALICS OURS]

This Court should note following excerpts from the First and Second Amended Complaints:

" . . . Plaintiff's real property lay within the designated area of the Plan, with access thereto from a public street from Gardner Avenue, on which street plaintiff's real property fronts. As a part of the planned project, as amended, Gardner Avenue in the Townsite area was designated to be vacated, however, the City took no action to officially close Gardner Avenue, which is still a public street which fronts the subject property, and is the only existing ingress/egress to the subject property.

Commencing in or about 1973, plaintiff began to negotiate with the defendants, and each of them, for possible resolution of his right to use and enjoyment of his property, since the defendants had indicated that plaintiff could not develop his property without securing a recognized access from another adjacent means . . .

Having no success in either effecting a trade . . . or acquiring other property to provide ingress/egress to his property, and without success in an effort to secure the purchase of his property by defendants at fair market value, plaintiff prepared and submitted his plans for development of his property along with the proper application for a building permit . . . showing entrance . . .

> from the existing public street, on or about June 7, 1988 . . . Thereafter, plaintiff was notified by defendants . . . that his application was denied. (The court should note the recommendation for denial of the permit by defendants' Staff, that the applicant's property is "landlocked" and "various alternatives have been exhausted".) . .

Plaintiff contends:

a. The vacating "on paper" of Gardner Avenue appears to be an exercise of the power of eminent domain, without the procedure required for such an exercise of power. *Defendants have effectively "landlocked" plaintiff's property* . . . In other words, *the effect of the "vacating" of Gardner Avenue is to deny plaintiff the use and enjoyment of his property which is a taking without just compensation*; . .

c. . . . *[D]efendants are presently acting on the premise that Gardner Avenue is not a public street, but defendants have taken no official action to formally close Gardner Avenue.* Since there have been no eminent domain proceedings commenced by the defendants as to plaintiff's property, *plaintiff has been denied both the right to the fair market value as determined by a jury of his peers, or the development of his property for a period of more than 15 years*;

Defendants' above described actions have caused a substantial impairment to the use and enjoyment of his property, and which impairment constitutes a taking without just compensation.

As a proximate result of the acts and deeds of defendants . . . *plaintiff has been damaged in an amount for the loss of use and enjoyment of his property* . . .

As an additional damage proximately caused by the acts and deeds of defendants, *plaintiff has been damaged by pre-condemnation loss of use and enjoyment*

of his property for more than 15 years . . .". [ITALICS OURS]

Thereafter, on January 17, 1991, plaintiff filed the Second Amended Complaint (which was his first attempt to amend his inverse condemnation action) Pertinent parts of the Second Amended Complaint are:

"Commencing in 1973, defendants . . . adopted a Redevelopment Plan . . . Plaintiff's real property lay within the designated area of the Plan, with access thereto from a public street, Gardner Avenue, from which street the only ingress/egress to plaintiff's property lies. As a part of the planned project, as amended, Gardner Avenue in the Townsite area was designated to be vacated, and plaintiff was informed and believes that Gardner Avenue was officially closed and abandoned by the City of Santa Fe Springs (hereinafter "City"), *which action had the effect of landlocking plaintiff's property. Moreover, in support of this belief, upon application to the City for a real property improvement permit, plaintiff was informed that no permit would be issued for that property since it had no public access, and none was expected to be made available to him.* He was encouraged to enter into negotiations with the City for the sale of his property to the City, *or*, in the alternative, to negotiate a trade of property location to another lot with street frontage not closed by the Plan, *since the Plan had permanently interfered with plaintiff's right to the development of his property with ingress/egress from Gardner Avenue.*

Commencing in or about 1973, plaintiff began to negotiate with the defendants (as above) . . . *Since the defendants had advised plaintiff that Gardner Avenue was no longer a source of ingress/egress to his property, being closed for that purpose . . .*

For an extended period of time, the City had represented to plaintiff that such common development was to be done by Santa Fe Energy, a private

commercial/industrial developer . . . *which had the effect of denying plaintiff a building improvement permit by interference with his right to ingress/egress from Gardner, and his constitutional right to the use and enjoyment of his property . . . although plaintiff had continuously sought a permit to improve his individual property.* . . . or about June 7, 1988, plaintiff prepared plans . . . for the development of his property and submitted his application in writing to the City . . . Thereafter, plaintiff was notified by the City that his application was denied without any evidentiary fact finding . . . other than the denial was based upon the fact that the City contemplated one large project within the Plan by one developer.

Plaintiff contends:

a. The City put into force and effect all of the provisions of the Plan, *which included closing Gardner Avenue as a viable ingress/egress source to plaintiff's property which had the effect of freezing plaintiff's right to the use and enjoyment of his property*, and to put him at the mercy of the "large" developer, *which amounted to a taking without just compensation*; . . .

The actions of the City as described above have caused a ***substantial interference and impairment with and to the use and enjoyment by plaintiff of his property****, which constitutes a taking without just compensation . . .*

[P]laintiff has been damaged by precondemnation loss of use and enjoyment of his property for more than 15 years . . .". [ITALICS OURS]

TWe above pleads a cause of action for a regulatory taking, based on the guidelines provided by First English Lutheran church v. Los Angeles County (1987) 482 U.S. 304 and Lucas v. South Carolina Coastal Council (1992) 505 U.S. ____ (120 L.Ed.2d 798, 112 S.Ct.2886).

The trial court, as well as the Appellate Court, disregarded the merits of the pleaded cause of action.

THE PLEADED LANGUAGE SHOWS THAT THERE WAS AN EXPLANATION FOR THE POSITION TAKEN.

Gardner Avenue was opened to the public as a street, but closed to OHAI for ingress/egress to his property. Moreover, since the AO does not comment at any length, or at all, on the issues raised by the respondents in its demurrer as to Res Judicata, Exhaustion of Remedies, and Limitations of Actions.

The AO states that a cause of action in inverse condemnation states facts showing government action which deprive plaintiff of substantially all use and enjoyment of his property. (App. 10).

The three pleadings all set forth in one form or another these critical, magic words. Whether or not Gardner Avenue was vacated, closed, or otherwise at the time the building permit was denied is not material. The City treated it as an abandoned, as vacated, as not-to-be-used, as not-to-be-developed, and did so commencing in 1973 with the adoption of the Plan.

Note footnote 15 at page 14 herein. Also note the admission of respondent, at App. 31:

> ***I can't stand before you and tell you that that was a proper exercise of their authority at that point. The statute of limitations ran from that point regarding that conduct, despite the fact that the parties kept talking about it for 15 years after that. And maybe Mr. Ohai was nicer than he should have been in continuing to talk about it*** . . . [EMPHASIS OURS]

In short, this Court should grant the Petition to clarify whether strict compliance with technical rules of

form pleading should be permitted to supersede constitutionally mandated rights.

Where the defendant is on reasonable notice as to what relief the plaintiff seeks, then the matter should proceed to trial on the merits and not be summarily terminated.

B. Certirorari Should Be Granted Because The Sustaining Of This Demurrer Without Leave to Amend For Technical Reasons, Has The Effect Of Improperly Granting Summary Judgment, And Results In Unfair And Less Favorable Treatment Of Citizens Of One State And Thereby Creates A Conflict Of Application Among The Jurisdictions.

When placed under the microscope of legal review, it appears that what has taken place is simply an attempt to avoid facing the many takings issues, present and past.

In *First Lutheran*, upon remand the Second District decided a taking had not occurred because the regulation in question protected public safety, after originally affirming the trial court decision that the regulation was irrelevant to a claim for damages, but properly challenged by declaratory relief or writ of mandamus, inserting the additional grounds that the United States Supreme Court had not yet ruled as to whether a state may constitutionally limit the remedy for a taking to a non-monetary relief.

Unfortunately, the remand never had an opportunity to resurface in the United States Supreme Court because the church ran out of money for litigation.[17]

The similarities of approach in this case to the *First Lutheran* case are most disturbing.

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[17] According to California State Bar publication, CALIFORNIA LAWYER, in an article by William Fulton, ESQ, the California Courts, Supreme and Court of Appeals, Second District (the same Courts from which this petition seeks review) fail to provide the same quick, speedy remedies of relief given by the South Carolina Supreme Court, i.e., the *Lucas*, supra, case.

In all fairness, disregard for the takings issue is not confined in California to the Second District. The recent decision of the U.S. District Court[18] in San Francisco in *Golden Gate Hotel Assn. v. City and County of San Francisco*, C-91-3386-1PV (filed June 2, and modified Sept. 9, 1993) dealt with an ordinance curbing the conversion of residential hotels to tourists hotels and any other action (such as going out of the business altogether) that would reduce the number of residential hotel rooms, or in the alternative, providing relocation assistance, or an "in lieu fee". (Source: THE PRACTITIONER, by Michael Berger, ESQ.,[19] Los Angeles Daily Journal, 10/13/93).

The essence of this ordinance was to force the few to pay the expenses of the public burdens which was contrary to the purpose expressed in *Armstrong v. U.S.* 364 U.S. 40, 49 (1959), to wit:

> " . . . The Fifth Amendment was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

This reasoning was amplified by the *First Lutheran* Court, in commenting on good intentions being

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[18] It is not difficult to imagine that in this particular instance the legal representative guided his client to the Federal Court system and away from the California system due to the inconsistency of application of the laws in takings cases. which could portend an increase in Federal cases in this area of the law, forcing the Federal system to bear the brunt of problems which logically are best resolved in the local state courts.

[19] Mr. Berger is the member of the Santa Monica firm of Berger & Norton, who was the counsel of record for *First Lutheran*.

irrelevant. When there is a taking there must be compensation.

> "Government action that works a taking of property rights necessarily implicates the constitutional obligation to pay just compensation." (Id, 482 U.S. 304, 315).

IF GOVERNMENT ENACTS LEGISLATION THAT TAKES PROPERTY AND INTENDS TO PROVIDE NO COMPENSATION, THE LEGISLATION IS INVALID.

See: *Hodel v. Irving* 481 U.S. 704 (1987).

While the *Golden Gate* court held the ordinance to be both a physical and a regulatory taking, was declared invalid and enforcement was enjoined, when the court ruled in June that the ordinance was unconstitutional, the City Attorney announced she would nonetheless continue to enforce the law. The September amendment to the court's order was brought about by the need to force the city attorney to obey the court's June order.

The San Francisco disregard for the authority of the Senior Federal Courts is no different in kind from that of the Second Appellate District in Los Angeles, as evidenced by the subsequent rejection of the taking issue on remand, as set forth above and herein.

Review should be granted in this case to assist the citizenry of California to getting a taking issue to the jury.

C. Certiorari Should Be Granted To Resolve Taking Issues Conflicts Which Proliferate Litigation At Both the Federal And State Levels.

To date, the United States Supreme Court keeps telling us (property owners) that there are no templates for these (taking) cases because each must be examined on its own facts, Berger, supra, which further states to wit:

> " . . . The utility of the *Golden Gate* opinion, supra, lies not only in its influence on regulatory taking factors in general . . . but in its analysis of how the recent decision of *Lucas*, supra, fits into the calculus.

Golden Gate explains two key concepts of regulatory taking law, 'economically productive use' and 'reasonable, investment-backed expectations.' These concepts have been a part of the taking equation since 1978's *Penn Central Transp. Co. v. City of New York* 438 U.S. 104, but little guidance on their use has been provided. *Lucas* added to regulatory taking lore the idea that a taking of all economically productive use was as much a per se taking as a permanent physical occupation of the land.

But a taking of less than all economically productive use does not mean there has been no taking. It merely means that the lower courts need to conduct an 'ad hoc' factual examination to determine whether fairness requires compensation.[20]

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[20] It is obvious that no such "ad hoc" investigation was conducted by Ohai's claim of a taking, nor is there any evidence that the fairness doctrine was ever considered by the California courts.

Lucas also explained what was meant by interference with reasonable, investment-backed expectations, which are the interests the property owner received at the time the property was acquired.

Golden Gate related both economic concepts to the reasonable expectations of the proeprty owners . . . The ordinance was a taking because it significantly diminshed an owner's rights to exclude people, to possess his property, to go out of the rental business and to use his property as he sees fit . . .

In the court's own words, the hotel owners 'voluntarily provided some low income housing by operating their properties on a residential basis for a period of time. Rather than commending the hotel owners for their efforts to help low-income individuals . . . San Francisco enacted the Residential Hotel Ordinance effectively placing plaintiffs into perpetual servitude by forcing them to remain in the residential rental business . . .'.

It is clear from the facts set forth in all of the pleadings submitted to the California Courts that what Ohai sought was to develop his property, that was his reasonable investment-backed expectation.

From 1973 to 1988, he voluntarily cooperated with the City on the premise that the City was sincere in its provisions for the development of the Project area pursuant to the Plan's inclusions as intentions and goals. But such was not to be, and when he finally forced the issue by making a formal application, which was denied on the basis that it was contrary to the contemplations for development of the Project area, and that Ohai's property was specifically landlocked (whether Gardner Avenue was open to the public or not, but it was not a means of ingress/egress for Ohai to develop his property), which interfered with all use and enjoyment of his property within those guidelines set forth above and herein for a

taking to exist.

An owner would indeed be naive to assume that the California Courts do not recognize a taking when they see it. It is more obvious that they recognize it, and beat it into submission by technical procedure, from bottom to top levels of the system.

This Petition should be granted to further provide the California Court system with a directive that where regulation violates the rules of *First Lutheran, Lucas*, and their progeny of cases filtering down through the Federal system, the ordinance will not be permitted to avoid the taking resoltuion through the guise of procedural technicalities.

The rule should be stated that where an owner puts a defendant on notice of his claim of a taking without just compensation in violation of his Fifth Amendment rights, the statement of ultimate facts will prevail over procedure.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted. In the alternative, the petition for Writ of certiorari should be granted, the judgment of dismissal vacated, and the case should be remanded to the Court of Appeals, Second District of California, with instructions to take the Second Amended Complaint as a sufficient statement of ultimate facts or to provide the opportunity to amend the pleading.

Respectfully submitted,

WILLIAM P. PAULSON
Counsel of Record

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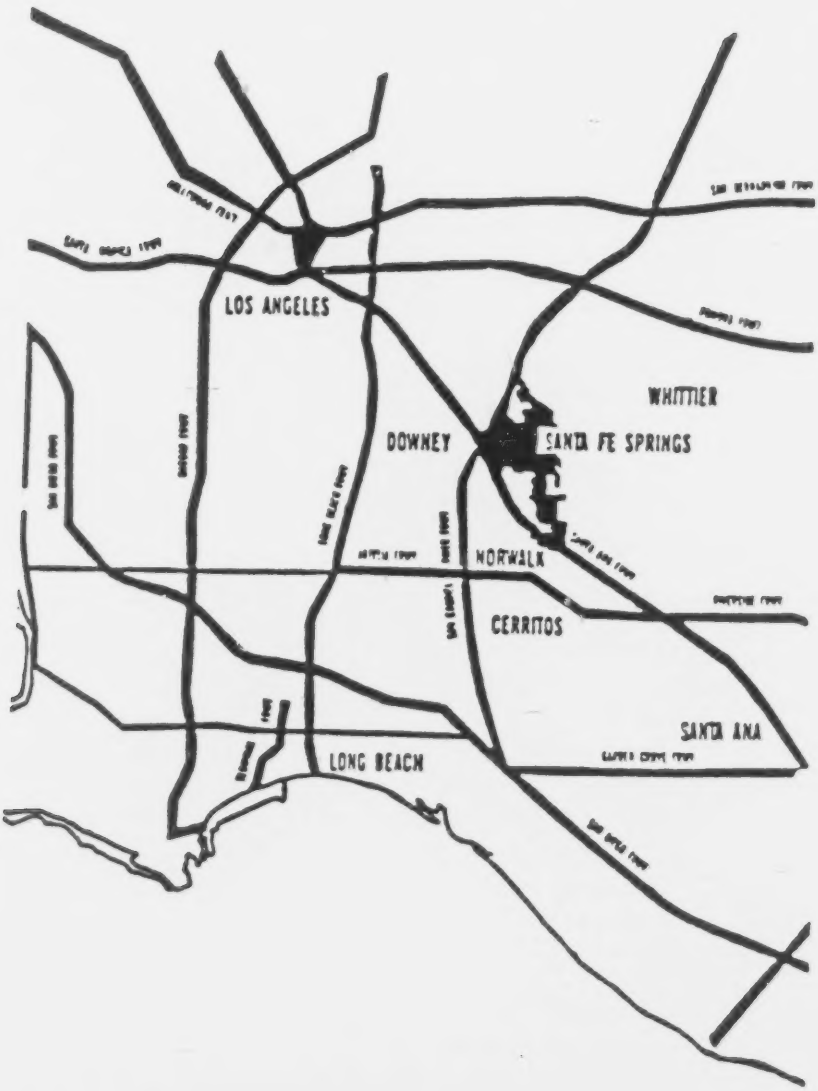
Fifth Amendment 100

Fourteenth Amendment 100

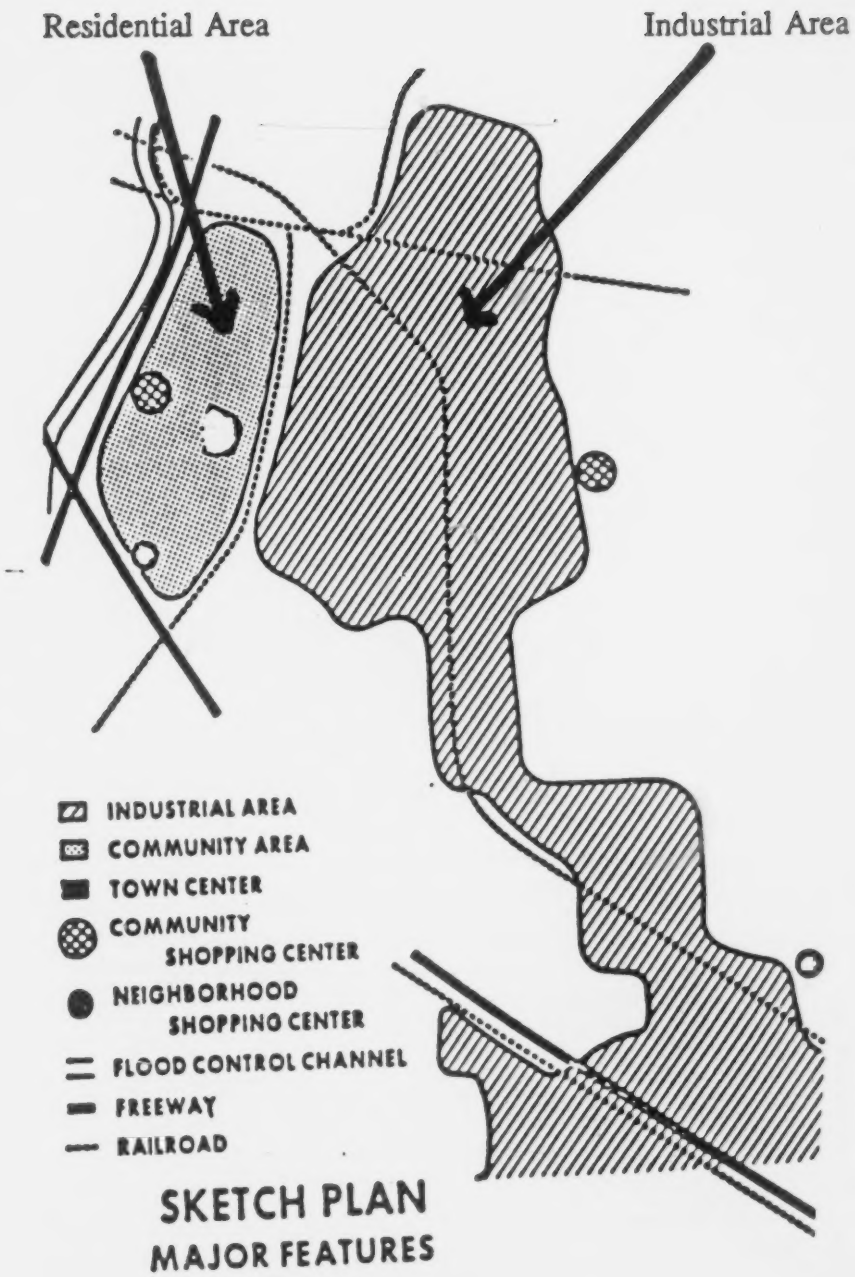
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App. 1

Santa Fe Springs
General City Location



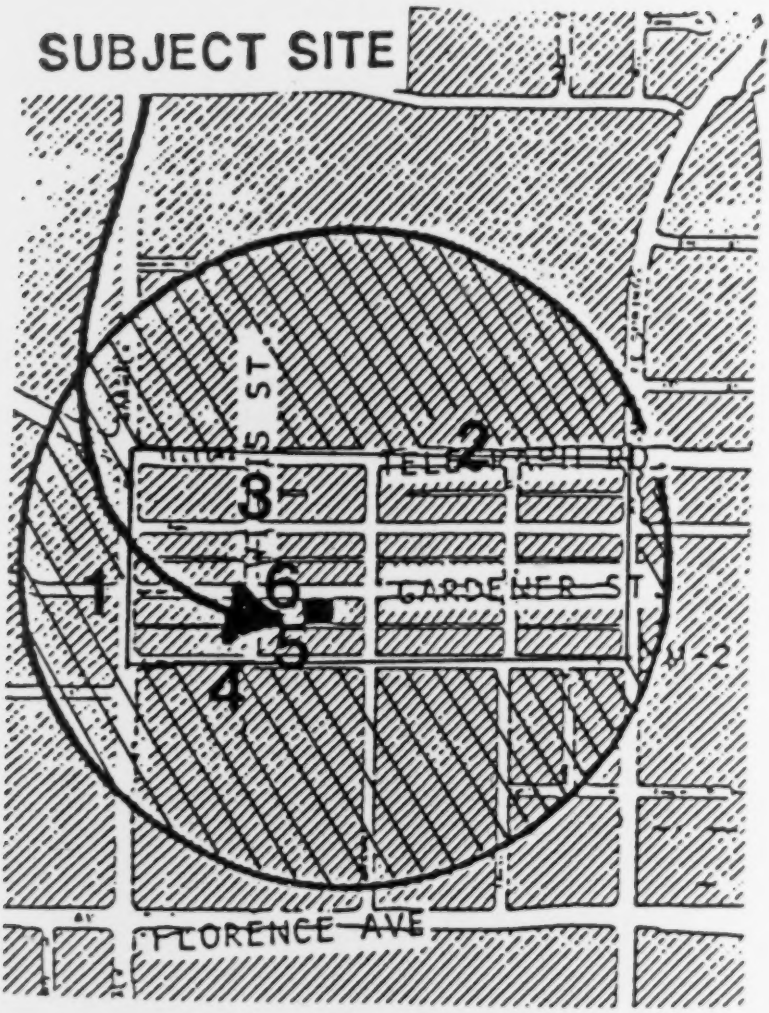
Source: City of Santa Fe Springs City Hall,
"Economic and Demographic Information"



Source: 1973 General Plan, City of Santa Fe Springs, California

App. 3

Townsite Area



Photographs

#1-Gardner Avenue west of Norwalk Boulevard.
#2-Screening along south side of Telegraph Road.
#3-Willis Street blocked off at Telegraph Road.
#4-From Willis Street to Clark Avenue.
#5-Clark Avenue to Townsite Area and Ohai property.
#6-Townsite area, Gardner Avenue and Ohai property.

Photo No. 1-- Gardner Avenue west of Norwalk Boulevard across from west border of Townsite Area.



Photo No. 2-- Screening along Telegraph Road on north border of Townsite Area.



Photo No. 3-- At north border inside Townsite Area, Willis Street closed at Telegraph Road.

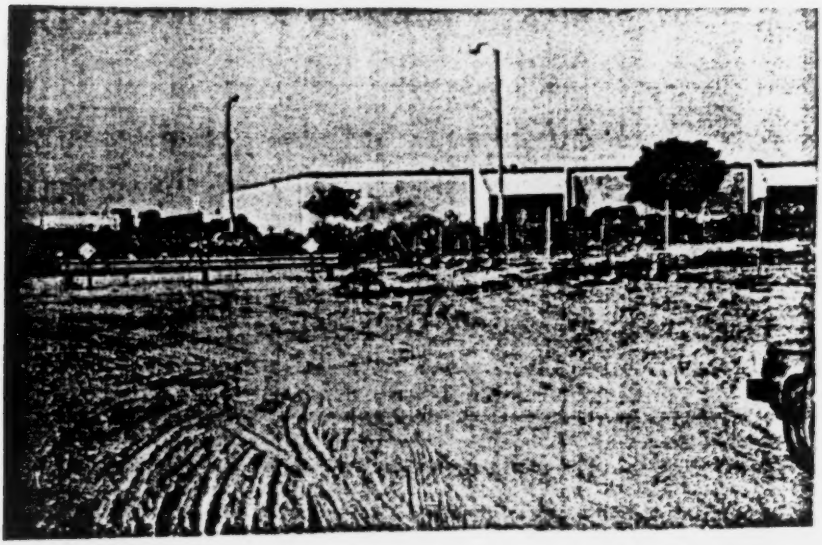


Photo No. 4-- At south border inside Townsite Area, taken from Willis Street to show north side of Clark Avenue.



Photo No. 5-- View to south border of Townsite Area from Clark with view to Ohai property.

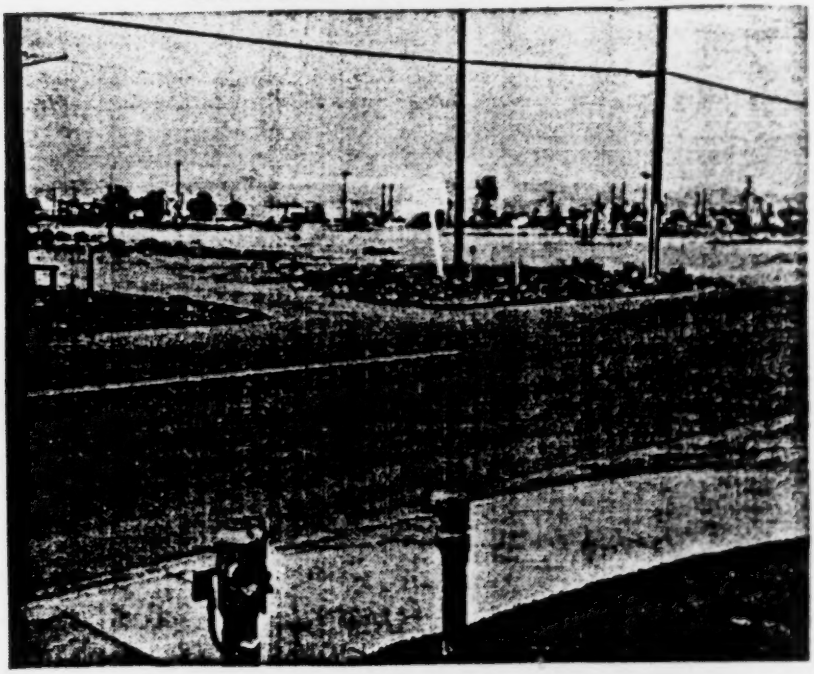
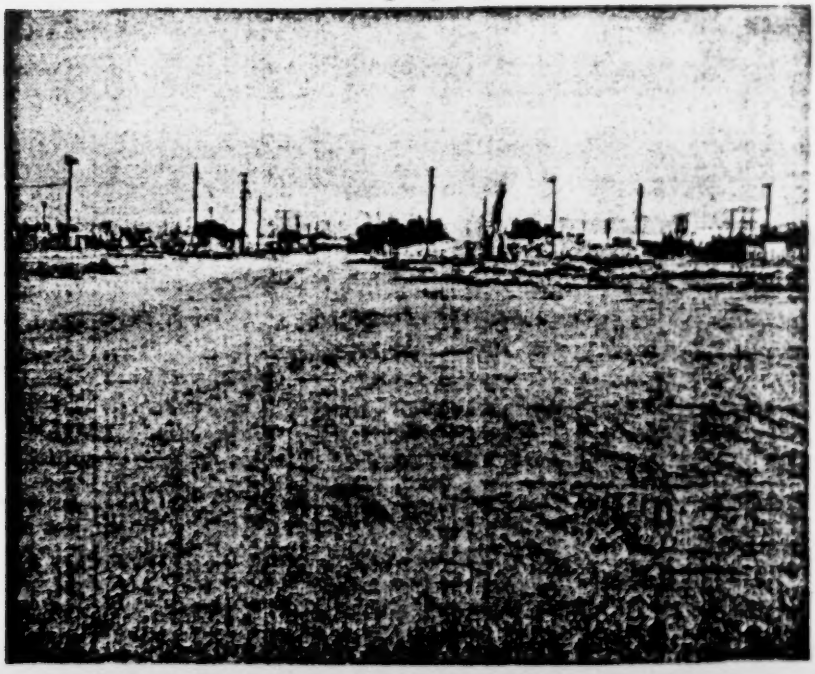


Photo No. 5-- Gardner Avenue inside Townsite Area and view of Ohai property.



App. 7

Second Appellate District, Division Five, No. B060463
S033593

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

[Filed August 11, 1993]

REYNOLDS K. OHAI, Appellant

v.

COMMUNITY DEVELOPMENT COMMISSION
ETC. Et Al., Respondents

Appellant's petition for review DENIED.

LUCAS
Chief Justice

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION FIVE

REYNOLDS K. OHAI,	B060463
	(Super. Ct. No.
Plaintiff and Appellant,	SEC 70627)
v.	
COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS, et al.,	
Defendants and Respondents.	[Filed May 26, 1993]

APPEAL from an order of the Superior Court of Los Angeles County. James W. Edson, Judge. Affirmed.

William P. Paulson for Plaintiff and Appellant.

Steven N. Skolnik for Defendants and Respondents.

I. INTRODUCTION

Reynolds K. Ohai (plaintiff) appeals from an order of dismissal entered after the trial court sustained a demurrer to his second amended complaint without leave to amend. Plaintiff contends he alleged sufficient facts to support a cause of action for inverse condemnation.[1] We reject his contentions and affirm the order of dismissal.

---

[1] Plaintiff's assertion his cause of action was not barred by any statute of limitations in that "a Constitutionally protected right [cannot] be lost by a codified limitation of actions statute" is without merit. An inverse condemnation action is subject to reasonable statutes of limitations. (Hensler v. City of Glendale (1993) 13 Cal. App.4th 1519, 1524; Otay Water Dist. v. Beckwith (1991) 1 Cal.App.4th 1041, 1048; Ocean Shore R.R. Co. v. City of Santa Cruz (1961) 198 Cal.App.2d 267, 273.) Plaintiff's argument the City of Santa Fe Springs was equitably estopped to assert a statute of limitations defense is not supported by any citation to legal authority or to the record on appeal. Therefore, it need not be considered. (Jimmy Swaggart Ministries v. State Bd. of Equalization (1988) 204 Cal.App.3d 1269, 1294.) Plaintiff has not raised any specific argument in support of: his second cause of action, for injunctive relief; his third cause of action, for declaratory relief; his fourth cause of action, for "conspiracy"; or his fifth cause of action, for intentional interference with prospective economic advantage. As a result, any potential issue as to those causes of action has been waived. (Tiernan v. Trustees of Cal. State University & Colleges (1982) 33 Cal.3d 211, 216, fn. 4; Johnston v. Board of Supervisors (1947) 31 Cal.2d 66, 70, disapproved on another point in Bailey v. County of Los Angeles (1956) 46 Cal.2d 132, 139; Denny's, Inc. v. Chicago Ins. Co. (1991) 234 Cal.App.3d 1786, 1790.)

II. DISCUSSION

The standard of review on appeal from the sustaining of a demurrer without leave to amend was set forth by the Supreme Court in Blank v. Kirwan (1985) 39 Cal.3d 311, 318, as follows: "In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]"

To state a cause of action for inverse condemnation, a plaintiff must allege facts showing government action which deprived him or her of substantially all use of the property. (Smith v. City and County of San Francisco (1990) 225 Cal.App.3d 38, 45.) It is not sufficient to allege the adoption of a general plan or a redevelopment plan which sets forth possible public uses of private property in the future. (Selby Realty Co. v. City of Buenaventura (1973) 10 Cal.3d 110, 119; Cambria Spring Co. v. City of Pico Rivera (1985) 171 Cal.App.3d 1080, 1097.)

Plaintiff's verified second amended complaint,

filed on January 17, 1991, is the operative pleading on appeal. He alleged the City of Santa Fe Springs (city) had adopted in 1973 a redevelopment plan which, as amended in 1975 and 1976, designated that a public street, Gardner Avenue, would "be vacated." Plaintiff alleged he "was informed and believes that Gardner Avenue was officially closed and abandoned by the City of Santa Fe Springs . . . , which action had the effect of landlocking plaintiff's property."[2] Plaintiff further alleged his application to the city for a real property improvement permit was denied on the grounds the property "had no public access." The timing of this application is not specifically alleged, but it appears from the allegations of the second amended complaint the application was made in or before 1973. It was also alleged that following negotiations with the city, "on or about June 7, 1988," plaintiff submitted an "Application for Development Plan Approval." Further, plaintiff claimed the application was denied "based upon the fact that the City contemplated one large project within the [Redevelopment] Plan by one developer."

Plaintiff argues the city caused his property to become landlocked and denied him a permit to improve the property on the grounds there was no access to the parcel. If the closure of Gardner Avenue caused the property to become landlocked, plaintiff could sue the city in inverse condemnation. However, the Community Development Commission of the City of Santa Fe Springs and the city (defendants) correctly note that "material factual allegations in a verified pleading that are omitted in a subsequent amended pleading without

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[2] As will be noted, it is of considerable importance that in the original and first amended pleadings, plaintiff alleged Gardner Street had not been closed.

adequate explanation will be considered by the court in ruling on a demurrer to the later pleading. [Citation.] (Shoemaker v. Myers (1990) 52 Cal.3d 1, 12.) As our Supreme Court stated in Hendy v. Losse (1991) 54 Cal.3d 723, 742-743: "'"Where a verified complaint contains allegations destructive of a cause of action, the defect cannot be cured in subsequently filing pleadings by simply omitting such allegations without explanation." [Citations.] "In such a case the original defect infects the subsequent pleading so as to render it vulnerable to a demurrer." [Citation.] However, we have also made it clear that "a party should be allowed to correct a pleading by omitting an allegation which, it appears, was made as the result of mistake or inadvertence."' [Citations.] That rule applies even more when a complaint is not verified. [Citation.]" In previous pleadings in this case plaintiff had alleged Gardner Avenue had not been closed. In both a verified petition for writ of mandate filed on October 14, 1988, and an unverified first amended complaint filed on December 29, 1988, plaintiff alleged "the City took no action to officially close Gardner Avenue, which is still a public street which fronts the subject property . . ." In his second amended complaint, plaintiff failed to explain the omission of the allegation Gardner Avenue had remained open as a public street. Therefore, the allegations of plaintiff's second amended complaint must be tested taking into consideration the allegation Gardner Avenue remained open as a public street. (Ibid.) This court must disregard the allegation in the second complaint that Gardner Avenue had been closed as a result of planning decisions made by the city. (Ibid.)

So read, plaintiff's second amended complaint failed to allege the city had deprived him of substantially all use of his property. As noted above, the allegation the city had indicated it might close Gardner Avenue in

the future was insufficient to support a cause of action for inverse condemnation because the property was not landlocked. (Selby Realty Co. v. City of Buenaventura, supra, 10 Cal.3d at p. 119; Cambria Spring Co. v. City of Pico Rivera, supra, 171 Cal.App.3d at p. 1097.) Further, the general allegation that the denial of the June 7, 1988, application constituted a "substantial interference and impairment with and to the use and enjoyment by plaintiff of his property . . ." was insufficient to state a cause of action. Plaintiff never alleged the city's actions in response to his June 7, 1988, application deprived him "of substantially all use of [his] property. [Citations.]" (Smith v. City and County of San Francisco, supra, 225 Cal.App.3d at p. 45.) That essential allegation that he had been deprived of substantially all use of his property never appears in the second amended complaint in any form. Therefore, the trial court properly sustained defendants' demurrer to plaintiff's second amended complaint.

The question arises, is there a reasonable possibility plaintiff could amend his complaint to state a cause of action for inverse condemnation? To meet his burden of showing an abuse of discretion, plaintiff was required to explain how the complaint could be amended to state a cause of action. (Hendy v. Losse, supra, 54 Cal.3d at p. 742) Such showing can be made in the reviewing court as well as in the trial court (Code of Civ. Proc., § 472c; Careau & Co. v. Security Pacific Business Credit, Inc. (1990) 222 Cal.App.3d 1371, 1386), but cannot be raised for the first time in oral argument. (New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co. (1992) 7 Cal.App.4th 1088, 1098.) Plaintiff has not specifically shown in the trial court or before us how the second amended complaint can be further modified to allege the city deprived him of substantially all use of his property within any applicable period of limitations. (See

Baker v. Burbank-Glendale-Pasadena Airport Authority (1985) 39 Cal. 3d 862, 867-868; Hensler v. City of Glendale, supra, 13 Cal.App.4th at pp. 1523-1524.) Therefore, we affirm the order sustaining defendants' demurrer to plaintiff's second amended complaint without leave to amend.

III. DISPOSITION

The order of dismissal is affirmed. Defendants Community Development Commission of the City of Santa Fe Springs and the City of Santa Fe Springs shall each recover their costs on appeal from plaintiff Reynolds K. Ohai.

NOT TO BE PUBLISHED

TURNER, P.J.

We concur:

GRIGNON, J.

GODOY PEREZ, J.

***

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

OHAI, REYNOLDS K	)	NO. SEC 70627
	)	
PLAINTIFF(S)	)	
	)	ORDER OF
vs.	)	DISMISSAL
	)	
SANTA FE SPRINGS	)	
CITY REDEVELOP AGEN	)	
BD-ET AL	)	
	)	
DEFENDANT(S)	)	[Filed June 19, 1993]

Good cause appearing therefor, the above entitled action is hereby dismissed under the provisions of Section 581(f) of the Code of Civil Procedure as to DEFENDANTS REDEVELOPMENT AGENCY OF THE CITY OF SANTA FE SPRINGS AND CITY OF SANTA FE SPRINGS

It is further ordered that said defendants REDEVELOPMENT AGENCY OF THE CITY OF SANTA FE SPRINGS AND THE CITY OF SANTA FE SPRINGS **have and recover costs against the** plaintiff REYNOLDS K. OHAI **in the sum of $**

DATED: 6-19-91

/S/
Judge

***

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. SE"W"
HON. JAMES W. EDSON, JUDGE

REYNOLDS K. OHAI,	)	NO. SEC 70627
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
REDEVELOPMENT	)	
AGENCY BOARD, et al.,	)	
	)	
Respondents.	)	
_____	)	[Filed Oct. 14, 1992]

REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 1, 1988
FEBRUARY 23,1989
JUNE 19, 1991

APPEARANCES:

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Jeanne Liberty, CSR #2761
Official Reporters

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

REYNOLDS K. OHAI,	)	NO. SEC 70627
	)	
Petitioner,	)	DECLARATION OF
	)	CHARLENE CASTLE
vs.	)	
	)	
REDEVELOPMENT	)	
AGENCY BOARD, et al.,	)	
	)	
Respondents.	)	
	)	

I, CHARLENE CASTLE, Supervisor for Transcript Services of the Los Angeles Superior Court, do hereby declare the following:

Court Reporter Pamela Merrill, CSR No. 3377, was the reporter for the date of December 1, 1988, in the above-entitled case;

That Ms. Merrill has resigned from the Superior Court and stated that she had prepared and forwarded her portion of this transcript to the primary reporter sometime in 1991.

That the primary reporter, Stephanie Martinez, has not now nor in 1991 received that portion of the transcript.

That the notes for the date of December 1, 1988, were ordered on several occasions through archives and cannot be located.

Therefore, the portion of Pamela Merrill's notes for the date of December 1, 1988, cannot [sic] be prepared.

I declare this to be a true and accurate account dated this 7th day of October, 1992.

/S/
CHARLENE CASTLE

NORWALK, CALIFORNIA
THURSDAY, FEBRUARY 23, 1989:

A.M. SESSION

DEPARTMENT SE "L"
HON. CHRIS R. CONWAY, JUDGE

APPEARANCES:

(SEE TITLE PAGE)
(JEANNE LIBERTY, OFFICIAL REPORTER)
[NOTE: Original typeset in all capital letters has been converted to upper and lower case letters for readability.]

THE COURT: Number 18, Dahai.

MR. PAULSON: Ohai?

THE COURT: Ohai I guess it is. I'm sorry.

MR. PAULSON: William Paulson appearing for the plaintiff Mr. Ohai.

MR. SKOLNIK: Steven Skolnik for the defendants and moving parties.

MR. PAULSON: I understand the tentative is to grant or sustain the demurrer with 30 days leave to amend.

THE COURT: Right.

MR. PAULSON: We'll submit.

MR. SKOLNIK: So will we. And we will waive notice.

THE COURT: Then the ruling is that the demurrer will be sustained with leave to amend. 30 days to amend.

Are you all of the parties then? Do you represent all the parties?

MR. SKOLNIK: Correct.

MR. PAULSON: Yes.
THE COURT: Then notice is waived. Thank you.
MR. SKOLNIK: Thank you.
THE COURT: The ground for that it fails to state a cause of action is the grounds for the demurrer.

NORWALK, CALIFORNIA, WEDNESDAY, JUNE 19, 1991; A.M.

DEPARTMENT NO. SE"W"
HON. JAMES W. EDSON, JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

[NOTE: Original typeset in all capital letters has been converted to upper and lower case letters for readability.]

THE COURT: Number 5, Ohai versus --

THE CLERK: Number 7.

THE COURT: Number 7.

MR. PAULSON: William Paulson appearing for the plaintiff, opposing party.

MR. SKOLNIK: Good morning, Your Honor. Steven Skolnik for the defendants and moving party.

THE COURT: Mr. Paulson.

MR. PAULSON: I guess the ball's in my court, isn't it?

THE COURT: Yes, it is.

MR. PAULSON: In a way it is not surprising that the Court has ruled as per the tentative. However, it is surprising that the effect of the ruling is that it completely absolves the City of Santa Fe Springs of any regulatory taking under the *First Lutheran* case. As I read the tentative, it's based on the moving papers and the reply brief.

THE COURT: Yes.

MR. PAULSON: And that -- those papers seem to address the *First Lutheran* case not as to the merits of whether or not this constituted a taking but on the basis that this was a time barred problem.

I'm not sure that *First Lutheran* represents a time barred problem. It's true that the church filed its action

shortly after the County of Los Angeles acted to bar the use of the land. However, in this case the ongoing negotiations between the City of Santa Fe Springs and the plaintiff appears to me to place the City of Santa Fe Springs in -- and the plaintiff in a vacuum as far as time is concerned.

The plaintiff kept imploring the the City to come forward with alternative land uses. There is no alternative use to an M2 land zoned properly [sic]. It's a manufacturing zoning. I can't understand the defendant Santa Fe Springs even alleging that the complaint is insufficient in that it does not allege there is no use of the land at all. *There is no use.*

If you can't build a property improvement, what could you use this land for? It isn't usable for anything. You can't operate a fruit stand or a vegetable stand or store papers on it or anything like that. It seems to me like the complaint does allege that problem.

Therefore, if the City was lulling through its representatives and authorized agents -- was lulling the plaintiff into a position of complacency that said, look, this land use regulation is intended to maximize the development potential of this area, and if you will be cooperative -- and that's what all of the correspondence and copies of which are attached to the complaint says, we will work your problem out along with the master development plan between the Santa Fe Springs. That to me indicates that the City is estopped from coming in later and saying, look, why didn't you file your complaint for taking if you were going to allege such a thing within the five-year period after the problem arose.

Well, the problem didn't arise, your honor, until 1989 when they abandoned the Plan. And that's exactly what happened in the *First Lutheran* case. And it was ripe at that time. And to take this case and to take this case and say that this is not a taking when First Lutheran

specifically says a land owner is entitled to bring an action in inverse condemnation as a result of the self-executing character of the constitutional provision with respect to compensation -- in other words, the city cannot use one constitutional provision that is its power of eminent domain and its regulatory power over land use to defeat another constitutional privilege that is the just compensation clause.

The two are -- that is what USC -- 42 USC 1983 is intended to remedy. It protects the landowner. It's -- God knows, I put the lawyer, the State Bar Journal article, the property rights of individuals with the giant cities and county, municipal authorities facing them, that the property rights have been deteriorated in this area of the law over a period -- a long period of years. And that's what First Lutheran tries to remedy. It doesn't have to be.

Also, First Lutheran says under the just compensation clause where the government has taken property by a land use regulation -- and I don't think there's any question that the government took Mr. Ohai's property -- the landowner may recover damages for the time before it finally determines that the regulation constitutes a taking.

And that's exactly what happened here. They decided in 1988 [sic] that they were not going to go through with this master plan. And that starts -- in my opinion and it's my argument if there is a time bar, it didn't occur until that particular act occurred.

I think, therefore, that the Court should consider the taking issue, and I will defer to the Court's judgment that we have not exhausted our remedies as to whether or not our building permit application in 1988 should have gone to the Planning Commission and City Counsel thorough that procedure. Although I think my papers indicate that I think that's an effort in futility when the

City Engineer and the head of the Building Departments tell you that this is the way it's going to be through the process, then my experience with those things are that we're going to end up back here after we make that paper trail though the City of Santa Fe Springs.

But I urge the Court to specifically tell us upon what basis the redevelopment act of the City of Santa Fe Springs does not constitute a taking under the First Lutheran holding. If it's time barred, if that's the Courts ruling -- and I think that's the only basis that I can read into the opposition paper -- then that's one thing as versus the taking issue.

THE COURT: Well, it appears there's other problems. It appears that the matter's res judicata at a previous discussion and failure to exhaust administrative remedies is raised as a viable defense and then the statute of limitation. It's one of those situations where there's three strikes and you're out.

MR. PAULSON: What is res judicata? I understand that concept, but I don't understand how res judicata effects [sic] this particular action, cause of action. There's never been any ruling. The original complaint and the petition that came to this Court, the Court specifically denied the petition for writ of mandate, administrative writ of mandate on the basis that the administrative remedies had not been timely exhausted but had granted leave to amend to file an action for taking.

Judge Allen specifically said that. And, therefore, I don't know how that particular issue has ever been ruled on.

THE COURT: I'm looking for my notes here.

MR. PAULSON: The Clerk is repairing her machine while you're looking for your notes, your honor, so we're losing no time.

THE COURT: Well, I don't see it right now.

Mr. Skolnik, do you want to answer that question?

MR. SKOLNIK: I'd like to refer the Court to pages 7 and 8 in my moving papers and the points and authorities and additionally to pages 11 and 12 in the reply brief which contain a rather concise explanation of how that particular document is applicable in the present circumstance.

MR. PAULSON: Well, that's specifically contrary to my understanding of what happened and the original petition. There was no ruling on a taking. Otherwise, the petition would have been granted., I mean, the opposition to the petition would have been granted without leave to amend or anything. It would have been kicked out at that time.

MR. SKOLNIK: We're not talking about ruling on a taking. I'm not talking about in a substantive sense. We're talking about something that is more procedural in nature which is the fact that there could have been and was not an appeal taken form the order that was made with respect to the dismissal of the mandamus petition.

There was leave to amend for purposes of bringing this different type of action for inverse condemnation purpose. But that doesn't -- I'm getting bogged down in something here that I think is almost peripheral to what's really before the Court.

THE COURT: Well, there's a question been raised here that we're -- I think you've explained it. In other words, the petition for writ of mandate was denied and no appeal was taken.

MR. PAULSON: But that -- but petition for writ of mandate was based on a failure to exhaust the administrative remedies as far as the application at that time, a permit application. It had nothing to do with the

cause of action for a taking. We couldn't take -- if he's going to grant leave to amend, that's not a final judgment as to the taking issue.

MR. SKOLNIK: Look at the --

MR. PAULSON: All we -- pardon me.

MR. SKOLNIK: Go ahead.

MR. PAULSON: All we could have done at that time is appealed the denial of the petition for administrative mandamus. We couldn't have appealed the Court's ruling because it gave a favorable ruling on whether or not allegations for a taking could have occurred by giving us leave to amend. Otherwise, why would he give us leave to amend? We couldn't appeal where we have leave to amend I don't think.

MR. SKOLNIK: The language that I think is most pertinent here is the language that's quoted at page 8 in the opening brief from the California Coast Commission versus Superior Court case from 1989 which talks about the mandate action being a necessary procedural predicate to seeking inverse condemnation damages based on a regulatory taking accomplished by and administrative agency. The property owner speaking to recover on an inverse condemnation commence the commission in a case such as this plus [sic] first establish the invalidity of the condition, et cetera. An administrative mandate proceeding provides the proper vehicle for such a challenge. That's the basis of the input that we're having right here.

THE COURT: But Mr. -- What's your name?

MR. PAULSON: Paulson.

THE COURT: -- Paulson is arguing that this is a different situation.

MR. PAULSON: This is a traditional mandate procedure for resolving the conflict between the just compensation clause and the regulatory taking powers of

the City. And it seems to me that if the Court's going to say that's time barred, if it's res judicata and all that it's going to say, well, the Court made a mistake back in 1989 when it granted you leave to amend.

How could I -- I don't see -- if I had taken that to the Appellate Court I think I'd have been kicked out of the loop faster than it got in.

They're going to say you've got leave to amend, you don't know what the disposition of this case is going to be. The Court said you didn't exhaust you administrative remedies as far as the mandamus proceeding that was before it, but it didn't say that you have exhausted -- you didn't exhaust other remedies. Amend you complaint and come back in and let's take a look at it.

And our position is the *First Lutheran* ought to give us an opportunity to go to the jury. The Court gave us an opportunity to come back in, and that's all we want is an opportunity to discuss this on the merits and to try on the merits our case. Because this man was denied the use of his property for 16 years, and the City of Santa Fe Springs says, well, that's too bad, we're going to abandon the Plan and you have no remedies.

Well, that's not true under *First Lutheran*, and that has never been finally adjudicated until today. And that's the reason why I think this record should be absolutely clear is that the Court is ruling that it has been adjudicated, although we've had leave of Court to amend on that very same issue.

THE COURT: Well, does that mean that -- is this your -- to get the procedure correct here. In this complaint which you filed is that the amended complaint in response to this leave to amend that you're speaking of?

MR. PAULSON: Yes. Yes.

THE COURT: Well, we got these same

problems. I mean, apparently the problems are still there.

MR. PAULSON: The problems are still there because they haven't been ruled on until this Court rules to grant the demurrer without leave to amend. But then it becomes ripe as far as my appeal time starting to run as far as that taking issue comes.

But it seems to me like if the Court is going to rule -- and that's my whole argument. If the Court is going to rule that we can't amend this complaint because there's no taking, that's one thing. If the Court's going to rule that we can't amend this complaint because much [sic] a time bar, that's another thing.

And the only thing that he, Mr. Skolnik and the City of Santa Fe Springs, raises that it's a time bar problem. It's a res judicata problem. It does not attack it on the basis that it's not a taking problem in my opinion.

MR. SKOLNIK: That's not entirely accurate. I'll try to be brief and cover the gamut of subjects that we're dealing with here.

It was very difficult from the amended complaint that the Court is ruling on for me to determine exactly which activities were really the charging allegations regarding the relief that's sought here. An that's why in out demurrer we dealt with it both as though it was seeking the challenge 1973 activities and as though it was seeking to challenge 1988 activities.

Despite what Mr. Paulson has indicated regarding the seeming unfairness of lulling this gentleman into a sense of complacency for a 16-year period, the law is absolutely clear cut as stated in the *Ocean Shore* case cited in the briefs that this does not constitute an estoppel.

So to the extent that what we're dealing with here is a challenge to the 1973 activities, I think it's crystal clear that's time barred by the statute of limitations.

If instead we're dealing with the 1988 activities, there are multiple problems. One is the res judicata issue as we've just discussed, and I really have nothing further to say about that. Another is the exhaustion of administrative remedies doctrine, and I'll get back to that in a second.

And, finally, kind of overlaying all of this is the question of whether this can possibly constitute a taking under the current state of the law. And I do believe that we argue in our papers it cannot based on the nature of the possible use of the property. And it's out position that leave to amend would be fruitless, because under the current state of the law what has happened with respect to the governmental interaction with the owner of that property regarding that property cannot be a taking and cannot yield any recovery under the theories that are pleaded in this case.

Returning for a second to the exhaust issue, Mr. Paulson has articulated what is in essence a futility exception argument to the exhaustion doctrine, although that's not pleaded. But he's made that point. I think it's important to focus on what has happened since the Court made its decision two and a half years ago with respect to the original mandamus petition.

Before the litigation geared up, again, there was a resubmission of a development plan and -- I've set this forth in a statement of facts. It went to the threshold level people, the staff people, and the staff people no longer took the position that this client can't use the property. They said you can develop. These are our rules, and these are the conditions that we have to impose.

And it was apparently Mr. Paulson's client's dissatisfaction with some of the conditions that were imposed by the staff that led to instead of a continued pursuit of a permit to develop the property that led to the

regearing up of the lawsuit on a different theory of recovery than the initial mandamus petition which he concedes can't be sustained any more because we're no longer taking the position that we are not going to grant him a permit.

So I am at a loss to understand how it is possible to plead that into the law that a taking took place.

THE COURT: What's your feeling about the *First Lutheran* case? That's counsel's basis of his motion.

MR. SKOLNIK: I think the *First Lutheran* case is discussed extensively, in particular in the reply brief which I hope the Court has had a chance to review in detail. I think that we make the point that this is distinguishable as not being the type of conduct that led to the holding in *First Lutheran.*

If you'd like me to elucidate?

THE COURT: No, you don't need to.

MR. PAULSON: I'm merely asking the Court. I have no problem with the Court granting the motion, the demurrer to the cause of action as far as the building permit controversy goes. As the opposing paper says, we can -- we have to go back to the City and go to the Planning Commission and then to the City Council and then come back and file a new action. We will accept that.

I think that specifically I'm asking the Court to rule on whether or not this is a *First Lutheran* case. For 16 years this man -- I think *First Lutheran* says that they can't take the property, put it in a vacuum for 16 years and then pull it out and say we did you know [sic] harm.

And if that's what -- if the Court is sustaining the demurrer, and I believe that's the First Cause of Action -- to the First Cause of Action and saying that the *First Lutheran* case is absolutely not applicable and we're granting the demurrer to that cause of action without

leave to amend, then I think I'd like the record to show that. Because I don't think the *First Lutheran* case says anything at all about a traditional mandate proceeding, and that's what this is, as contrasted to the administrative mandate proceedings which is mandamus and res judicata and time barred and all those other things. I don't think it applies at all to the taking argument.

THE COURT: Well, it was an inverse condemnation case.

MR. PAULSON: It was. But the Court specifically said you can have inverse condemnation cases of all types in one is where there is a taking without a final determination of imminent [sic] domain proceedings. I read that specifically to the Court. It's covered on page 305 of the *First Lutheran* case; and that's what the *First Lutheran* case seeks to do, to give some relief to property tied up and then all of a sudden the person or the entity, the governmental body that says we're going to ultimately do something with this property and then ultimately they decide they're not going to do anything with this property.

MR. SKOLNIK: Your Honor, here's --

MR. PAULSON: There's a difference.

MR. SKOLNIK: Putting aside the substantive *First Lutheran* issues, here is the essential flaw with that argument. The activity which gave rise to a cause of action with any -- with respect to this occurred in 1973 when this agency said you can't develop your property because we're going to vacate that street somewhere off in the distance.

I can't stand before you and tell you that that was a proper exercise of their authority at that point. The statute of limitations ran from that point regarding that conduct, despite the fact that the parties kept talking about it for 15 years after that. And maybe Mr. Ohai was nicer than he should have been in continuing

to talk about it, [EMPHASIS OURS] but that does not legally under the case law estop the governmental entity from asserting the statute of limitations.

MR. PAULSON: I think that argument is flawed, because if we take that statute of limitations as being absolutely mandatory to be applied, it's a five-year statute, then we go back to 1983 and that same Plan was still in force and effect and there was still a taking in 1983. So my argument was that under the *Carbine* case there is a successive period of statute of limitations. If he didn't act in 1973 -- and he should have acted. I still say he didn't have to act until after it was finally determined that the Plan was going to be abandoned and that nothing was going to happen according the implied promises.

As Justice Cardoza said many years ago, in contract law things fairly to be implied can be read into things. And these people were -- what Mr. Skolnik is saying is that these guys had no authority to act, but they acted like they had authority and they were acting under a color of authority.

And when that happens, it seems to me like that's a promissory estoppel and declaratory relief action flies, again in my opinion, because now we come into the area that the Court's going to have to decide ultimately whether or not we're going to have a promissory estoppel back to 1973.

But, in any case, we got it to 1983.

THE COURT: I'm going to hold this case till the recess. I'm going to take another look at the *First Lutheran* case.

MR. PAULSON: Thank you, Your Honor.

THE COURT: And then we can -- right now we'll proceed with some other cases.

MR. PAULSON: Thank you. Do we have time to go get a cup of coffee?

THE COURT: Yes.

MR. SKOLNIK: Are we ordered back at any particular time, Your Honor?

THE COURT: if we go here till 10:30, we'd take our recess at that time so -- I can't guarantee what the rest of the cases are going to take, but you probably could come back at 10:30.

MR. SKOLNIK: Thank you.

(The Court heard other matters.)

THE COURT: This is the case Reynolds K. Ohai, O-H-A-I, versus Santa Fe Springs.

MR. PAULSON: yes.

MR. SKOLNIK: Steven Skolnik, S-K-O-L-N-I-K, for the defendants and moving parties.

MR. PAULSON: And William Paulson, P-A-U-L-S-O-N, for the plaintiff and responding party.

THE COURT: Let the record show that I've had an opportunity to study the *First Lutheran Church* case. I can't say that I've read all of it in that time, it's 30 pages long, but I've reviewed my notes of it and -- as well as reading portions of the case. It appears to be a little different.

As I understand it, this case only considered one question, whether the just compensation clause requires the government to pay for temporary regulatory takings. Is it your position that that's the very issue that's before the Court here?

MR. PAULSON: That is, yes, Your Honor. And the taking issue for the 15 years of exposure that the land had to non-use due to the Redevelopment Plan.

THE COURT: Well, the Court -- there's these defenses here that are raised, and I think that so far as the complaint's concerned the 1973 denial of the permit is barred by statute of limitations. That's 15 years till 1988. Now, in 1988 your client apparently applied for a writ of mandate which was denied because he

hadn't exhausted the administrative remedies.

MR. PAULSON: Right.

THE COURT: And he was given leave to amend, but he never did exhaust his administrative remedies. And so here we're back here now in superior court, and he hasn't exhausted his remedies. Now, I understand he did a declaration of futility, but I don't think that excuses him. Now, another problem that I see with the case is the fact that Gardner Street is still open and he has access to the property and he -- *it can't be said that the property has no use to him. He can grow vegetables on it or have some sort of a storage, open storage if it's -- the problem here is that he can't do everything he wants to obviously. Maybe he can't do anything he wants to. But there is access to it. It's not landlocked. Gardner Street is still open, and it has been I guess all these years.*

There are things that can be done on a lot like that. I don't know the area, but there's things such as a parking lot, a storage yard, some sort of a use on a weekly basis for swap meets. You know, they have a value.

So I think that based on what I can see that he's got some insurmountable burdens in this case at this point. It's not as if -- the defendants do not have to show every possible reason for this matter to -- not to be granted, they only have to show on one basis. But they've come forward with the statute of limitations, exhaustion of the remedy and the fact that the property has not been -- he's not been denied all use of his land. So that's -- and I don't see anything in here that changes that. [ITALICS OURS]

MR. PAULSON: Well, the point that we're trying to make in this lawsuit -- and I'm encouraged by the fact that as an attorney I'm not the only one that has problems trying to make this position clear. But our

position is its not what happened in 1988, it's what happened between the period 1973 and 1988.

There was no use for that property, absolutely none. Gardner was closed by the Redevelopment Plan period, and we've alleged that it was closed. [ITALICS OURS]

Now, imminent [sic] domain. They didn't close it by an exercise of imminent [sic] domain. But that's exactly what *First Lutheran* says. They don't have to do that the period that they closed it temporarily until they exercised their imminent [sic] domain or abandon it, and the *First Lutheran* case says specifically down the line the City may take one or two or three actions. They may either abandon the project, they may exercise imminent [sic] domain or they may do other things.

But that's exactly what happened here, between '73 and '88 it was closed and the Redevelopment Plan says it is vacated.

THE COURT: Was it open?

MR. PAULSON: There was no barrier put across there, but you had no ingress, legal ingress or egress to that property over Gardner Avenue. So you couldn't have used it for anything. You couldn't have used it for anything.

And, therefore, our position is that between '73 and '88 it didn't have any use. Now it does. Gardner is open again. It has no legal barrier. The Plan has been substantially vacated by the City.

THE COURT: What's the physical difference between now on Gardner Street and in the past?

MR. PAULSON: The physical? Looking at the property it's just deteriorated to the point of non-use. There's been no traffic over it. It's a dirt road for -- it's a pot holes and part asphalt and part dirt and so forth. If you don't know that area, it's in an area that historically

has been an oil field area and there's no development in it at all.

The Redevelopment Agency, the triangle there, all it's got is some old pumping devices on it for oil and gas. But the area itself looks like California back in the '40's. It looks abandoned. There's no water. There's no sewer. There's no sanitation facilities available without running -- and you couldn't. You couldn't run any sanitation facilities under the Plan because the Plan had reserved that right. They were going to develop it with Santa Fe Energy.

So our position still is that we're not concerned about the Court's problems of what happened in 1988. [sic] The land does have use now. We can go forward with a building permit and develop our property on an M2 basis subject to all kinds of conditions which weren't in force and effect in '73.

But the Court correctly observes that I haven't gone that route because of the futility problem. If I have to the Planning Commission and the City Counsel and then come back to the Courts, I guess that's what we will do. But I'm talking specifically now about the First and Fourth and Fifth Causes of Action which, if the Court rules there's no taking, the Fourth and Fifth Cause of Action fall to the ground. But if the Court rules that the matter of the taking is pleaded under the *Lutheran*, *First Lutheran* case, then it should overrule the demurrer on the First and Fourth and Fifth Causes of Action. That's our position.

THE COURT: Fine.

Counsel?

MR. SKOLNIK: Thank you, Your Honor.

First, I agree with what the Court said at the outset of the reconvened hearing. I think the court has focused on the essential problem, that being *First Lutheran* addresses only a substantive issue and has none

of the problem procedural elements that this case presents.

Mr. Paulson has now clarified that he's focusing in on conduct that took place beginning in 1973. Let's talk about that for a second. There are procedural problems with respect to that. There's the statute of limitations problem. It's the defendant's position, as explained in the reply brief, that the *Carbine* case which Mr. Paulson mentioned earlier is not on point. And Mr. Paulson is essentially arguing that the entire period for which there was this alleged total loss constitutes some sort of ongoing conduct which in essence results in the statute of limitations being triggered at any point during that 15-year period. And that's entirely temporary [sic] to the case law that's cited in the briefs. To the extent that there ever was any actionable event which triggered a statute of limitations, that event occurred in 1973. Hence the statute of limitations problem.

Beyond that, there's an exhaustion problem with respect to 1973 as well. All that ever happened in 1973 was dealing at the staff level, and because of that there was no actionable conduct even in 1973.

In 1973 just as in 1988 the staff people had no ability to legally bind the defendants in this case to any particular position. So we have never in the 18-year history of this had Mr. Ohai pursue this to its completion on an administrative level. And regardless of what ramifications that has for what type of action Mr. Ohai might have, what it says is that the current action before the Court is fatally defective.

Although I think it's off point, I want to clarify the status with respect to Gardner in case the Court is concerned about that for any purpose in this ruling.

Other than simple deterioration of the street in the area which has taken place over a long period of time because there hasn't been any development activity there,

there really hasn't been any physical change to Gardner Street. Gardner Street was never physically closed.

Gardner Street is a street that is mostly dirt with a little bit of asphalt here and there and was never really, in recent times at least, turned into a street up to proper standard. [ITALICS OURS]

The Redevelopment Plan did not have the legal effect of closure of Gardner for access purposes. *The Redevelopment Plan simply said that it was a goal of the redevelopment process and to ultimately have Gardner vacated as a public street and closed. That never occurred. What was changed in recent times is that given that development did not occur on a large scale in that area over the previous 15 areas, the Redevelopment Agency has in essence said, well, I guess that objective isn't going to be achieved because it hasn't been achieved to this point, therefore we're certainly not going to stand in the way of people who want to develop their property as though Gardner is a street, which it is.* [ITALICS OURS]

MR. PAULSON: I don't have the case citation, but I've been to the federal system, and I have cited in the past the case that says a violation of a constitutional protected right doesn't have a statute of limitations. If if [sic] you violated it, it can always be alleged. And I would defer to the Court's memory if he's ever heard such a provision.

You cannot impede a constitutionally protected right and then come back and say, well, why didn't you say something then, It just isn't done. *You can't use a constitutionally protected authority to deny a constitutionally protected authority.* [ITALICS OURS]

And that's what's being done in this case, and that's what has been done. And I think the -- the period from '73 to '88 is flawed as far as the moving paper are concerned, and I don't have anything else to say.

THE COURT: Do you want to have some time to look up that case?

MR. PAULSON: Yes, I would, sir, if the Court's willing to give me some time. Unfortunately I have a matter in the United States District Court in Memphis, Tennessee. I'm leaving day after tomorrow, and I'll be back on July 1st. If the Court could give me to the 15th of July, I'd -- I don't need that much time, but I don't know what I'll come back to for problems.

MR. SKOLNIK: Your Honor, if the Court is inclined to go that route, might I suggest -- if the Court would prefer that we come back, of course, I will have no problem with that. But I was simply going to suggest if Mr. Paulson wants to submit written authority on that narrow issue without reopening the briefs with respect to every other issue and if I would have an opportunity to respond also with respect to that narrow issue, I would be happy to submit it.

MR. PAULSON: I would submit and just that one issue, whether there is any statute of limitations on a violation of a constitutionally protected right.

THE COURT: Okay.

LAW CLERK: *Yes, there is. It's considered a personal right and therefore personal injury, and under 1983 it's a one-year statute. In California it's a one-year statute for personal injury. It's a violation of constitutional rights. It's a personal right and, therefore, it's a personal injury and a one-year statute of limitations.* [ITALICS OURS]

THE COURT: The law Clerk is pointing out section 1983 which we run into in cases here, federal cases. But it may be that you're thinking of something a little different. Although I have great confidence in the law research clerk, I also have respect for your judgment. So we won't put this off any further than we have to. You'll be back the 1st of July?

MR. PAULSON: Yes.

THE COURT: Okay, then you brief would be due here the 8th.

MR. PAULSON: The 8th?

THE COURT: Yes.

MR. PAULSON: All right, Sir.

THE COURT: And --

MR. SKOLNIK: Might I have a week, also, if possible?

THE COURT: The problems here -- there's several problems you have. It's the res judicata effect, the failure to exhaust remedies, the -- what was the other one? Failure to exhaust remedies and the statute of limitations. We're going -- if you did find something, the decision won't be any different.

MR. PAULSON: Oh, well.

THE COURT: Because we've got these other two aspects to the case.

MR. PAULSON: I say that they are not applicable. The statute of limitations is not applicable. It's never been decided res judicata. This issue has never been decided by this Court or any other court, and it's a separate procedure from administrative mandamus. Therefore, exhaustion of administrative remedies are not applicable. That's our position.

THE COURT: I know.

MR. PAULSON: If the Court is going to rule that because of the administrative mandamus denial of a writ and because the statute of limitations and because of res judicata, then there's no need to go further. The Court can rule. *But I take it that the Court is not specifically ruling on a taking.* [ITALICS OURS]

THE COURT: Well --

MR. PAULSON: *I mean, it has the effect of denying the taking issue as ever getting ripe in the pleadings.* [ITALICS OURS]

THE COURT: *Well, that -- there is a ruling on that. I've indicated that there was no regulatory taking.* [ITALICS OURS]

MR. PAULSON: Okay.

THE COURT: *Because the property did have some use. It was there. The road was there. I'm doing that with -- in a sort of a broad sense. I haven't seen the property, but since the road was there, even though it wa not a street according to the records -- so that delay would probably not accomplish anything.* [ITALICS OURS]

MR. PAULSON: Oh, no, it wouldn't. I would submit on the face of the argument.

THE COURT: The tentative order will be the ruling of the Court.

MR. SKOLNIK: Thank you, your Honor.

Procedurally what is the policy of this Court regarding how to get from here to a dismissal of the action in terms of anything I should prepare?

THE COURT: Well, we have -- you're going to want --

THE CLERK: Is that the only --

MR. SKOLNIK: This is all there is in the case, and I think a dismissal is appropriate under the circumstances. What I'm really inquiring is whether you are granting a dismissal now or whether there's something else that I need to do?

THE CLERK: Dismissal will automatically be prepared.

MR. SKOLNIK: The Court will prepare that?

THE CLERK: Yes.

MR. PAULSON: And you will be mailing out a notice of entry of dismissal?

THE CLERK: No, counsel needs to.

MR. PAULSON: I think that's what he's saying.

THE COURT: You need to give notice.

MR. SKOLNIK: Based on what has happened here I don't have to wait for some subsequent document?

THE CLERK: You can prepare it today.

(END OF PROCEEDINGS.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. SE"W"
HON. JAMES W. EDSON, JUDGE

REYNOLDS K. OHAI,	)	NO. SEC 70629
	)	[sic]
Petitioner,	)	
	)	REPORTER'S
vs.	)	CERTIFICATE
	)	
REDEVELOPMENT	)	
AGENCY BOARD, et al.,	)	
	)	
Respondents.	)	
	)	

STATE OF CALIFORNIA)
)SS
COUNTY OF LOS ANGELES)

I, Stephanie A. Martinez, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 6 through 31, comprise a full, true and correct transcript of the proceedings and testimony taken in the matter of the above-entitled cause of June 19, 1991.

Dated this 27th Day of September, 1992.

/S/ CSR#5866
Official Reporter

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. SE"L"
HON. CHRIS R. CONWAY, JUDGE

REYNOLDS K. OHAI,	)	NO. SEC 70627
	)	
Petitioner,	)	
	)	REPORTER'S
vs.	)	CERTIFICATE
	)	
REDEVELOPMENT	)	
AGENCY BOARD, et al.,	)	
	)	
Respondents.	)	
	)	

STATE OF CALIFORNIA)
)SS
COUNTY OF LOS ANGELES)

I, Jeanne Liberty, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing page, 5, comprises a full, true and correct transcript of the proceedings held in the above-entitled matter, as designated by counsel to be included in the transcript on appeal, reported by me on February 23, 1989.

Dated this 27th Day of November, 1991.

/S/ CSR#2761
Official Reporter

WILLIAM P. PAULSON
Attorney at Law
P.O. Box 6084
Laguna Niguel, CA 92677
(714) 643-9070

Attorney for Plaintiff
REYNOLDS K. OHAI

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

REYNOLDS K. OHAI,	NO. SEC 70627
Petitioner,	NOTICE OF RULING
vs.	
REDEVELOPMENT AGENCY BOARD, et al.,	
Respondents.	

The petition for Writ of Mandate filed by Petitioner, REYNOLDS K. OHAI, and the Demurrer filed by Respondents, REDEVELOPMENT AGENCY OF THE CITY OF SANTA FE SPRINGS AND CITY OF SANTA FE SPRINGS, came on regularly for hearing on December 1, 1988, in Department W of the above-entitled court, the Honorable _____ Judge presiding. The petitioner was present in court represented by WILLIAM P. PAULSON, Esq., and the respondent was represented by STEVEN N. SKOLNIK, Esq.. [sic] Having read the papers and documents on file herein, and having heard the arguments of counsel, and

good cause appearing,

The Court ORDERED that:

1. The Petition for Writ of Mandate is denied, and the Demurrer is sustained, both rulings on the basis that the Petitioner has not exhausted his administrative remedies for writ proceedings to go forward,

The Court further ORDERED that the Petitioner has 30 days leave to amend his pleading to set forth a cause of action in inverse condemnation, inter alia, on the basis that the effect of the denial of the Petitioner's application for a building permit reflects an issue of a taking of property requiring just compensation since the pleadings suggested that the permit application would be denied based upon the current redevelopment plan adopted by the City of Santa Fe Springs, and further administrative proceedings appear futile.

DATED: December 1, 1988

/S/
Attorney for Petitioner

WILLIAM P. PAULSON
Attorney at Law
P O Box 6084
Laguna Niguel, CA 92607
(714) 643-9070

Attorney for Plaintiff,
REYNOLDS K. OHAI

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

REYNOLDS K. OHAI,	)	NO. SEC 70627
	)	
Plaintiff,	)	SECOND AMENDED
	)	COMPLAINT
vs.	)	
	)	
REDEVELOPMENT	)	
AGENCY BOARD, PLAN-	)	
NING COMMISSION,	)	
CITY OF SANTA FE	)	
SPRINGS, CALIFORNIA,	)	
SANTA FE ENERGY,	)	
DOES 1 through 10,	)	
inclusive,	)	
	)	
Defendants.	)	[Filed January 17, 1991]

Plaintiff alleges:

FIRST CAUSE OF ACTION

1. Defendants, and each of them, are public entities organized and existing under the laws of the State of California.

2. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sues each of these defendants by their fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of said fictitiously named defendants is in some manner responsible for the injuries and damages to plaintiff as alleged herein.

3. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, defendants, DOES 1 through 10, inclusive, were the agents, servants and employees of their codefendants, and, in doing the things herein alleged, were acting within the course and scope of their authority in their capacity as agents, servants, and employees with the permission and consent of their codefendants.

4. Plaintiff is the owner of the real property located in the City of Santa Fe Springs, County of Los Angeles, California, described as:

> The real property located south of Gardner Avenue-East property line 120' from West side of Springdale Avenue

and was the owner of said real property at all times mentioned herein.

5. Commencing in 1973, defendants, and each of them, adopted a Redevelopment Plan for Oil Field Redevelopment Project, which plan was amended August 14, 1975, and amended a second time on December 14, 1976, the latter amendment being adopted by Ordinance 510, dated December 14, 1976. Generally under the Plan, certain real property was designated to be improved and developed pursuant to the General Plan of the City of Santa Fe Springs, which included, inter alia,

industrial/commercial projects within the designated area. Plaintiff's real property lay within the designated area of the Plan, with access thereto from a public street, Gardner Avenue, from which street the only ingress/egress to plaintiff's property lies. As a part of the planned project, as amended, Gardner Avenue in the Townsite area was designated to be vacated, and plaintiff was informed and believes that Gardner Avenue was officially closed and abandoned by the City of Santa Fe Springs (hereinafter "City"), which action had the effect of landlocking plaintiff's property. Moreover, in support of this belief, upon application to the City for a real property improvement permit, plaintiff was informed that no permit would be issued for that property since it had no public access, and none was expected to be made available to him. He was encouraged to enter into negotiations with the City for the sale of his property to the City, or in the alternative, to negotiate a trade of property location to another lot with street frontage on a street not closed by the Plan, since the Plan had permanently interfered with Plaintiff's rights to the development of his property with ingress/egress from Gardner Avenue.

6. Commencing in or about 1973, plaintiff began to negotiate with the defendants, and each of them, for possible resolution of his right to the use and enjoyment of his property, since the defendants had advised plaintiff that Gardner Avenue was no longer a source of ingress/egress to his property, being closed for that purpose. Many discussions and negotiations were conducted with the City for either a trade of the subject property, or the purchase of an adjoining property with ingress/egress from another street not closed by the Plan. It was represented that some of the individual parcels within the Plan were acquired by the City through negotiated purchase, while other parcels therein were

within a contemplated common development under a single developer/contractor for the entire area, including the portion owned by the City. For an extended period of time, the City had represented to plaintiff that such common development was to be done by Santa Fe Energy, a private commercial/industrial developer, however, in late 1987, or early 1988, the parent company of Santa Fe Energy directed that all of the property holdings of said company be liquidated, and Santa Fe Energy would not be a party to the contemplated development of the project under the Plan, which had established those properties within the Plan area by boundary under the ordinance which had the effect of denying plaintiff a building improvement permit by interference with his right of ingress/egress from Gardner, and his constitutional right to the use and enjoyment of his property. Plaintiff is informed and believes, and thereon alleges, that the City had appropriated funds for the off-site and other expenses contemplated by the Plan's common development as agreed to with Santa Fe Energy. The withdrawal of Santa Fe Energy left the City with no apparent development plan for the contemplated area within the Plan, and the City was unable to advise plaintiff when, if ever, the project would be commenced or completed, both as to the represented off-site and on-site improvements within the Plan properties, although plaintiff continuously sought a permit to improve his property. Correspondence reviewing the above over the period 1985 to February, 1988, are attached hereto and incorporated herein by this reference as EXHIBITS "A", "B", "C", "D", and "E", respectively, and which amplify the more recent past history of the plaintiff's involvement with the City and the project.

7. Subsequent to the above events, on or about June 7, 1988, plaintiff prepared plans and specifications for the development of his property and submitted his

application in writing to the City for his contemplated property improvements, since there was no decision known to the plaintiff as to any time frame reference for the project to go forward, a copy of which application is attached hereto and incorporated herein by this reference as EXHIBIT "F". Thereafter, plaintiff was notified by the City that his application was denied without any evidentiary fact finding as to the proposed location and elevations of the improvement, other than the denial was based upon the fact that the City contemplated one large project within the Plan by one developer.

8. Plaintiff contends:

a. The City put into force and effect all of the provisions of the Plan, which included closing Gardner Avenue as a viable ingress/egress source to plaintiff's property which had the effect of freezing plaintiff's right to use and enjoyment of his property, and to put him at the mercy of the "large" developer, which amounted to a taking without just compensation;

b. It is questionable that the purpose of the project under the ordinance as adopted is within the constitutional authority of the City since the project is for private development by a private company with the City providing the force to coerce small property owners to submit to the Will of the private sector partner of the City, with or without just compensation, mostly without, rather than for "public use" which is the basis of eminent domain authority.

c. The essence of what the City did, and was doing under the Plan, was to act as a purchasing agent for a private company.

9. The actions of the City as described above have caused a substantial interference and impairment with and to the use and enjoyment by plaintiff of his property, which constitutes a taking without just compensation, thereby damaging plaintiff in an amount

which is not now known, but plaintiff will amend this complaint to provide therefor when the same is finally determined according to proof.

10. As an additional damage proximately caused by the acts and deeds of the City, plaintiff has been damaged by pre-condemnation loss of use and enjoyment of his property for more than 15 years in an amount which is not now known, but plaintiff will amend this complaint to provide therefor once the same is finally determined according to proof.

11. Plaintiff has incurred, and will incur attorneys' fees, appraisal and engineering fees because of this proceeding, in amounts not yet determined, which are recoverable in this action under the provisions of Section 1036, Code of Civil Procedure.

SECOND CAUSE OF ACTION

12. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in his First Cause of Action.

13. Plaintiff contends that due to said substantial interference with the use and enjoyment of his property, he is entitled to receive from the City a permit for his contemplated property improvement under the statutory building and safety code in force and effect within the City at the time of the adoption of the Plan, since the denial of a property improvement after the adoption of the Plan is violative of the provisions of Civil Code Section 52.1(b), and 42 U.S.C. 1983. Under said statutory authority, the due process clause protects property owners from improperly motivated, unfairly conducted or unnecessarily protracted governmental decision making, and under which authority the above-stated acts and deeds of the City amounts to a

"Regulatory Taking".

14. The wrongful conduct of the City, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to plaintiff in that the City has enacted into force and effect property improvement requirements which seek to pass the expense of off-site and on-site improvements which were a benefit to the property owner assumed by the City to the property owners, those of individual building construction safety excepted, e.g. earthquake protection requirements, etc.. Thus, even if the City now takes the position that it will issue a permit to plaintiff, such will be such excess in costs as to represent an economic waste to plaintiff.

15. Plaintiff has no adequate remedy at law for the injuries suffered in that plaintiff will be forced to bring a multiplicity of actions to protect himself against the ongoing interference with his legal rights, since the plaintiff cannot force the City to so issue a permit without an order of this court for a mandatory injunction for such permit.

THIRD CAUSE OF ACTION

16. Plaintiff realleges and incorporates herein by this reference each and ever allegation set forth in his First and Second Causes of Action.

17. An actual controversy has arisen and now exists between plaintiff and the City concerning their respective rights and duties as to what provisions of any building permit issued to plaintiff should or would include, in that plaintiff contends that he has a constitutional right to develop his property on the same basis that he could have developed the same at the time

of the adoption of the Plan by the City, whereas the City contends that if a permit is issued by the City then it will include all of the provisions now in force and effect, regardless of the expense to be suffered by plaintiff as versus that at the time of the passing of the ordinance by the City.

18. Plaintiff desires a judicial determination of his rights and duties, and a declaration as to which of the above-stated positions is correct.

19. In the absence of the requested mandatory injunction, plaintiff will be forced to either seek a distress sale of his property at a substantial value less than market, or, in the alternative, to submit to the dictates of the City as to the terms and conditions of any permit offered for a property improvement by the City, as an additional damage to those suffered over the past 16+ years due to the denial of a permit for such improvement.

20. Subsequent to the filing of the original complaint herein, plaintiff has submitted his proposed property improvement plan to the City, and has received a recommendation of approval therefor from the City Building and Safety Department, however subject to terms and conditions which render the property to be improved too costly for the size of the project, e.g. off-site and on-site improvements. A copy of such conditions is attached hereto and incorporated herein by this reference as EXHIBIT "G".

FOURTH CAUSE OF ACTION

21. Plaintiff realleges and incorporates herein by this reference each and every paragraph set forth in his First and Second Causes of Action.

22. In doing the things herein alleged, the City and Santa Fe Energy entered into a conspiracy according

to a common plan and scheme to exclude the individual parcel owner, including the plaintiff, from developing his/her property to the full use and enjoyment based on the provisions of the Plan, and at which times, and all times herein mentioned, said City and Santa Fe knew, or should have known, that such common plan and scheme was an intentional violation(s) of the precious rights protected by 42 U.S.C. 1983 and the California Tom Bane Civil Rights Act as set for forth at Civil Code Section 52.1(b), and they, and each of them, knew or should have known, that such common plan and scheme was, in effect, a regulatory taking, the exact protection which the above-cited Federal and State authority prohibits.

23. As a proximate result of the acts and deeds of the City and Santa Fe Energy, plaintiff has been damaged in an amount which is not now known, but plaintiff will amend this complaint to provide therefor once the same is finally determined according to proof.

24. The conspiracy herein alleged was done with malice and oppression and intentionally to harm and injure plaintiff, and plaintiff is entitled to punitive damages in an amount which will punish said defendants, and each of them.

FIFTH CAUSE OF ACTION

25. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in his First, Second, and Fourth Causes of Action.

26. In doing the acts and deeds herein alleged, the City and Santa Fe Energy intended to substantially interfere with plaintiff's constitutional right to develop his property and to freeze him out of the prospective

economic advantage which he could enjoy by such development at the time of the adoption of the Plan favoring, to the exclusion of plaintiff, the common develop of all property(s) within the area comprising the Plan townsite by a single private developer. Said favoritism was known by the City and Santa Fe Energy, or should have been known, to have the effect to place plaintiff at the mercy of said Santa Fe Energy to force a sale or abandonment by plaintiff of his valuable asset.

27. The acts and deeds of the City and Santa Fe Energy were intentionally designed under the common plan and scheme to disrupt plaintiff's economic advantage from said development of his property, and force him to submit to the Will of Santa Fe Energy as to the common plan and scheme.

28. As a proximate result of the above-stated acts and deeds by the City and Santa Fe Energy, plaintiff has been damaged in an amount which is not known, but plaintiff will amend this complaint to provide therefor once the same is finally determined according to proof.

29. The said acts and deeds of said defendants, and each of them, were done intentionally and with malice and oppression, and plaintiff is entitled to punitive damages in an amount which will punish said defendants.

WHEREFORE, plaintiff prays for judgment:

1. For damages in an amount for the taking without just compensation according to proof;

2. For pre-condemnation damages for the loss of use and enjoyment of plaintiff's property over the past 15 years according to proof;

2. For an order requiring the City to show cause why it should not be ordered to issue a building permit to the plaintiff based on the terms and conditions in force and effect at the time of adoption of the Plan;

3. For a temporary and permanent mandatory injunction prohibiting the City from requiring plaintiff to meet the terms and conditions of any building permit which he seeks for his property based on present code requirements, and ordering such permit to be issued under the terms and conditions in force and effect as of the time of the adoption of the Plan, those of individual building safety excepted, e.g. earthquake protection requirements, etc.;

4. For a declaration that the plaintiff is entitled to an order requiring the City to issue any building permit applied for under the terms and conditions in force and effect at the time of adoption of the Ordinance 510 (referred to as the Plan);

5. For damages proximately suffered by plaintiff from the common plan and scheme conspiracy between the City and Santa Fe Energy, according to proof;

6. For damages proximately suffered by plaintiff from the intentional interference by the City and Santa Fe Energy of plaintiff's right to the use and enjoyment of his property, according to proof;

7. For punitive damages in an amount necessary to punish the City and Santa Fe Energy;

8. For reasonable attorney's, engineering, and appraisal fees according to proof;

9. For costs of suit herein;

10. For such other relief as the court may deem proper.

DATED: January 5, 1991

/S/
Attorney for Plaintiff

VERIFICATION

State of California, County of Orange:

I am the plaintiff in the above action, and I have read the Second Amended Complaint, and know the contents therein to be true of my own personal knowledge.

I declare under penalty of perjury that the above is true.

Executed this _____ day of January, 1991.

/S/
REYNOLDS K. OHAI, Plaintiff

EXHIBIT "A"

CITY OF SANTA FE SPRINGS
City Hall, 11710 Telegraph Road 90670 - P.O. Box 2120
(213) 863-0511

May 28, 1985

Re: Reynolds Ohai Property
Trade Options

Mr. Alex Hoffen
Hoffen and Hoffen
7915 S. Painter Avenue
Whittier, CA 90602

Dear Mr. Hoffen:

Per our discussion May 17, 1985, I have developed what the ramifications would be for your client, Mr. Ohai, to trade/purchase land in two areas. As you recall, the first area (Option A) we discussed consists of 6 lots east of Springdale Street between Clark Avenue and Gardner Avenue. The second area (Option B) included the "5 lots" east of Willis Street between Clark Avenue and Gardner Avenue. Please see the attached map which illustrates the locations.

Each location has one inactive oil well. The oil wells affecting both properties are designated as replacement wells within the Santa Fe Springs Unit operated by Mobil Oil. I have shown the best possible (or least impact) location for the working and enclosed areas that will be necessary for maintenance operations of the wells. The

exact size and location of the working and enclosed area around each well would be dependent on approval by the Santa Fe Springs Oilfield Unit. This approval would be through Mobil Oil Company, as they are the operator of the Santa Fe Springs Oilfield Unit.

In addition, the map also indicates those street and alley locations designated for future abandonment. No purchase costs were calculated for the substantial amount of land that would be added to the option areas once the streets and alleys have been vacated. If the rights-of-way were abandoned prior to our sale of the parcels, we would be selling the right-of-way at the same per sq. ft. cost as the parcel itself.

Using our appraised values for the lots involved, I have developed a summary table showing the land trade costs for your clients. The land trade for Option A would involve an additional cash payment to the Agency of $79,342; Option B would involve an additional cash payment of $70,495. Under both options, deductions were included for the oil well areas. Please see the summary table for the detailed cost breakdowns.

In order for the land to be available for either land trade, the Agency will have to acquire some parcels through purchase as well as conclude its trade agreement with Santa Fe Energy. Concerning Option A, lots 9, 10 and 11 of Block 91 are in negotiation for purchase by the Agency. Concerning Option B, lot 9 of Block 90 would need to be acquired. The remaining parcels necessary for the trade of either option are part of the Santa Fe Energy trade or are owned by the Agency.

[Page 2]
May 28 1985
Mr. Alex Hoffen

As we stated at our May 17 meeting, if we are unable to complete these negotiations in the next six (6) months, we would be willing to recommend that the Agency Board acquire the land by eminent domain proceedings.

I have also attached a summary of the utilities that exist in the area for both options. This utility summary also lists what utilities need to be extended and from what distance.

If you have any questions concerning this matter, please give me a call.

Sincerely,

/S/
James P. Turba
Associate Planner

JPT:jc

cc: Mr. and Mrs. Reynolds Ohai

UTILITY SUMMARY PAGE

Option A (Springdale/Clark)

Water:	Need to tie into 12" line existing along Clark Avenue.
Sewer:	Need to extend sewer on Springdale Street from just south of Clark Avenue (Approximately 150-200 feet)
Storm Drain:	No storm drain is present on Clark Avenue or Springdale Street. Would need to extend the existing one on Springdale Street from south of Clark Avenue (approximately 200-300 feet). Note: Clark Avenue storm drain construction is proposed for City's Fiscal Year 1987-1988.
Electricity & Gas:	Need to be underground and to connect to existing lines from either Springdale Street or Norwalk Boulevard.
Street Improvement:	All curbs, gutter and street improvements, including street lights, are to be constructed along Clark Avenue and Springdale frontage.

Option B (Willis/Clark)

Water:	Tie into 12" line existing along Clark Avenue.
Sewer:	Need to extend sewer from Norwalk Boulevard (approximately 750 feet).
Storm Drain:	No storm drain presently on Clark Avenue or Willis Street. Note: Clark Avenue storm drain construction is proposed for City's Fiscal Year 1987-88.
Electricity & Gas:	Need to be underground and to connect to existing lines from Norwalk Boulevard.
Street Improvements:	All curbs, gutter and street improvements, including street lights are to be constructed along Clark Avenue frontage.

LAND TRADE OPTIONS SUMMARY						
OWNER-SHIP	PARCEL SIZE	LAND VALUE		DEDUCTIONS		NET VALUE
		($4.50) Per S.F.	($4.00) Per S.F.	Oil Well Areas		
				Working (25%)	Enclosed (85%)	
OHAI PROPERTY						
(12-1)	25,274		101,100	-----	-----	$101,100
Option A						
(13-1)	14,922	67,150		----	----	67,150
(13-2)	7,461		29,150	----	----	29,850
(13-4a)	22,383	100,700		6500 SF = $7,313	2600 SF = $9,945	83,442
Subtotal	44,766	167,850	29,850	7,313	9,945	$180,442
Streets & Alleys	8,700	----	----	----	----	----
TOTAL	53,406	167,850	29,850	7,313	9,945	$180,442

LAND TRADE OPTIONS SUMMARY						
OWNER-SHIP	PARCEL SIZE	LAND VALUE		DEDUCTIONS		NET VALUE
		($4.50) Per S.F.	($4.00) Per S.F.	Oil Well Areas		
				Working (25%)	Enclosed (85%)	
Option B						
(12-1)	8,680	39,100		----	----	39,100
(12-2)	12,636		50,550	700 SF = $700	----	49,850
(12-5a)	21,316	95,920		5000 SF = $5,625	2000 SF = $7,650	82,645
Subtotal	42,632	135,020	50,550	6,325	7,650	$171,595
Streets & Alleys	18,668	----	----	----	----	----
TOTAL	61,300	135,020	50,550	6,325	7,650	$171,595

** This figure represents the appraised value, as do all the other figures on this table.

App. 66

Map with 5/28/85 Letter

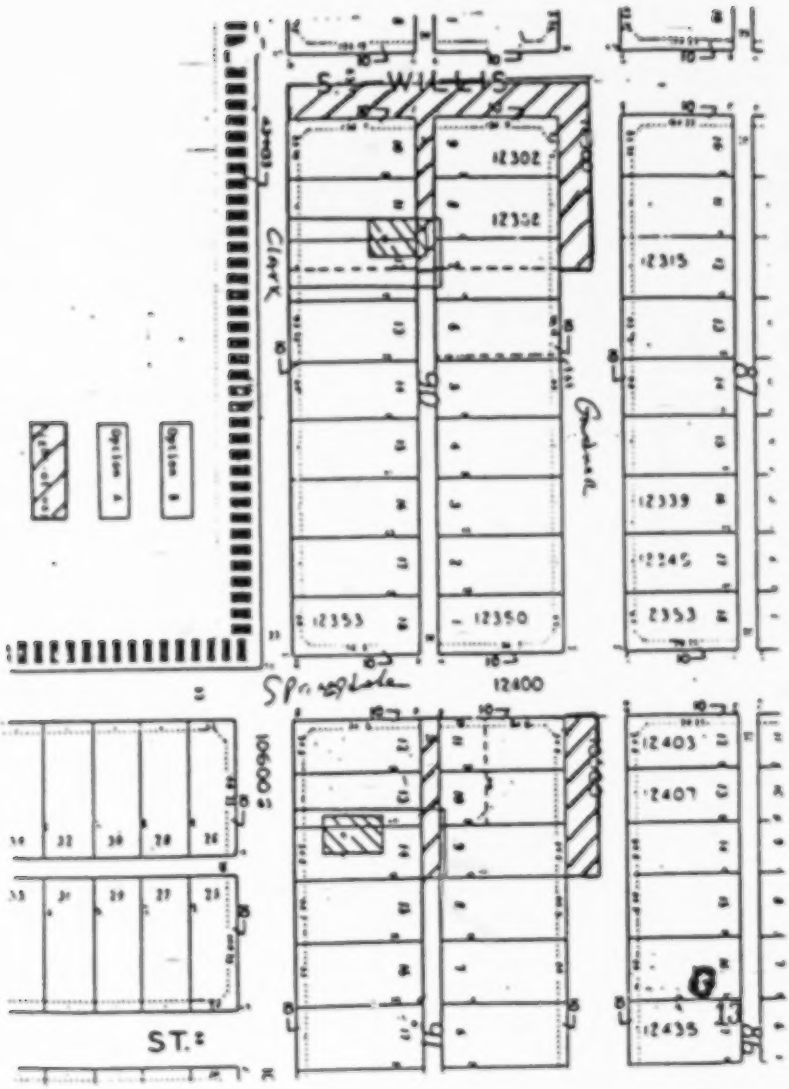


EXHIBIT "B"

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670 -
P.O. Box 2120 - (213) 868-0511

August 28, 1985

RE: Reynolds Ohai Property
Trade Options

Mr. Alex Hoffen
Hoffen and Hoffen
7915 S. Painter Avenue
Whittier, CA. 90602

Dear Mr. Hoffen:

Per our last discussion, I have developed a new set of calculations regarding the possible trade of property within the Oil Field Area. As you instructed I have developed the ramifications for a trade that would involve the trading of Mr. Ohai's property (lots 3,4,& 5) for lots 1,2, 17, and 18 of Block 90.

Enclosed is a map showing the configuration of lots 1,2,17 and 18 as they relate to the existing oil wells on the property. On personnal [sic] inspection of the property, I have colored in the possible location for the working area and the enclosed area that may be reserved by Mobil.

In order for the land trade to be available for the land trade, the Agency will have to acquire three parcels (lots 1,2, and 18) and conclude its trade agreement with Santa Fe Energy (lot 17). None of these parcels are presently

owned by the Agency.

After your review of this new trade option and your consultation with Mr. Ohai, please give me a call concerning the direction you wish to take.

Sincerely,

/S/
James P. Turba
Associate Planner

enclosures

OWNER-SHIP	PARCEL SIZE	LAND VALUE		DEDUCTIONS		NET VALUE
		($4.50) Per S.F.	($4.00) Per S.F.	Oil Well Areas		
				Working (25%)	Enclosed (85%)	
OHAI PROPERTY						
(12-1)	25,274		101,100	-----	-----	$101,100
Option C						
(12-6) (12-7) Portion (12-5)	32,676	147,042	----	13,500	18,360	$115,182
Subtotal	32,676	147,042	----	13,500	18,360	$115,182
Streets & Alleys	2,400	----	----	----	----	----
TOTAL	35,076	147,042		13,500	18,360	$115,182

** All figures are based on the appraisal value prepared for the Redevelopment Agency.
THE DIFFERENCE FOR THIS TRADE IS $14,082 THAT WOULD BE OWED THE AGENCY BASED ON THE APPRAISALS FOR THE AREA.

App. 70

Map with 8/28/85 Letter

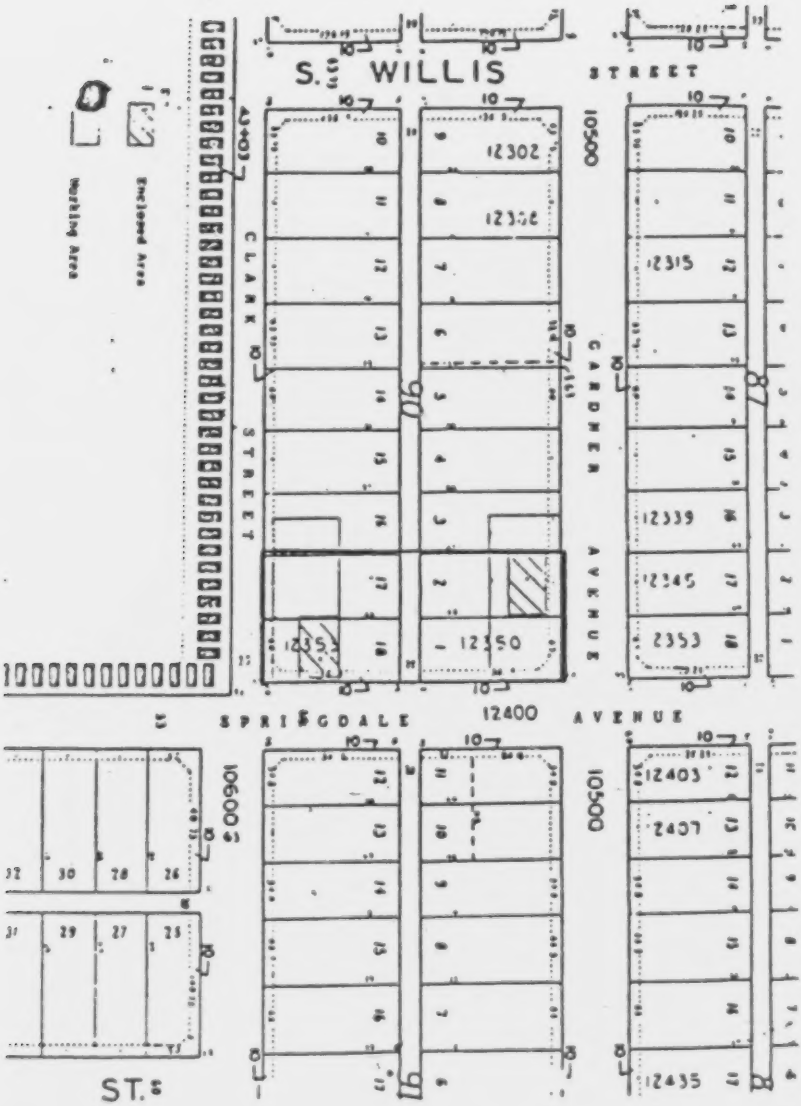


EXHIBIT "C"

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670 -
P.O. Box 2120 - (213) 868-0511

October 18, 1985 RE: Reynolds Ohai Property
Trade Options

Mr. & Mrs. Reynolds Ohai
8515 Chetle Avenue
Santa Fe Springs, CA 90670

Dear Mr. & Mrs. Ohai:

Per our last discussion, I have developed a new set of calculations regarding the possible trade and purchase of property within the Oil Field Area. As you instructed, I have developed the ramifications for a trade that would involve lot 3 for lot 6 and your purchasing the southerly lots 13, 14, 15.

Enclosed is a map showing the configuration of the lots as they relate to the existing oil wells on the property. On personnal [sic] inspection of the property, I have colored in the possible location for the working area and the enclosed area that may be reserved by Mobil.

In order for this land trade/purchase to come about, the Agency will have to acquire lot 6 and conclude its trade agreement with Santa Fe Energy for lots 13, 14, 15. None of these parcels are presently owned by the Agency.

After your review of this new option and your consultation with your attorney, please give me a call concerning the direction you wish us to take.

Sincerely,

/S/
James P. Turba
Associate Planner

JPT:rec

enclosures

App. 73

Map with 10/18/85 Letter

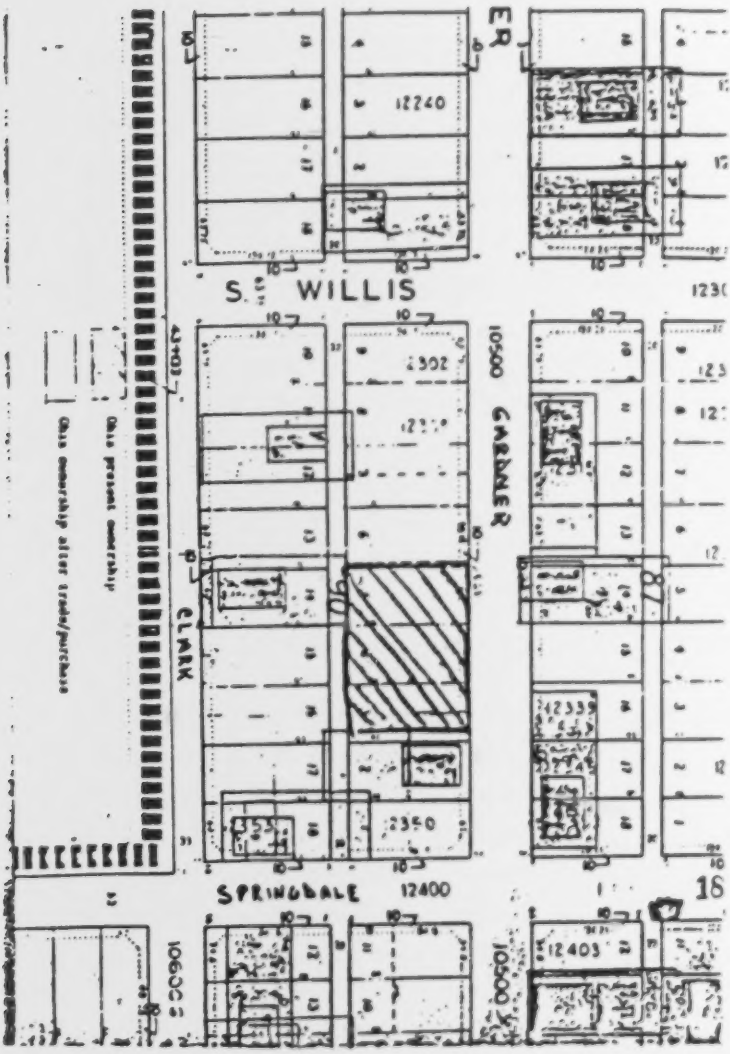


EXHIBIT "D"

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670 -
P.O. Box 2120 - (213) 868-0511

April 27, 1987

Mr. Reynolds K. Ohai
8515 Chetle Avenue
Santa Fe Springs, CA 90670

Dear Mr. Ohai:

Subject: Land Trade/Sale - Oil Field Townsite

Pursuant to our phone conversation last week, I am writing this letter to you to summarize the difficulties the Agency has had in pursuing the land trade/sale/purchase of property with you in the Oil Field Townsite Area. From the meeting between yourself and Dick Weaver, the Agency has agreed to pursue a land trade and purchase of property for you in the oil field area between Gardner and Clark west of Springdale Avenue. In our previous conversations, the Agency has stated that part of the property to be traded and sold to you would first need to be acquired from the Santa Fe Energy Company. The Redevelopment Agency has over the last four years been trying to acquire lots from Santa Fe Energy through a land trade. The Redevelopment Agency has a draft agreement with Santa Fe Energy to accomplish this goal. However, to date the Redevelopment Agency and Santa Fe Energy have not been able to conclude that land trade

for various reasons.

Over the past 18 months, and since our understanding with you, the Redevelopment Agency has pushed Santa Fe Energy Company to conclude the land trade. Santa Fe Energy Company has had difficulty concluding this deal because of complications resulting from the merger of the Santa Fe Energy Companies and the Southern Pacific Companies. To date, no final agreement has been signed.

Since October of last year (1986), the Redevelopment Agency and Santa Fe Energy Company have had to put on hold the land trade agreement due to the discovery of methane gas within the Oil Field Townsite Area. A study conducted by the State of California indicated that there are two test sites having dangerous levels of gas near your property and the property in question. The Redevelopment Agency has presently authorized the same soil firm to conduct additional studies within the entire Oil Field Townsite Area to determine if the methane gas that was discovered by the State study exists both on the properties that are in question with our land trade as well as others involved with the Santa Fe Energy land trade.

The Redevelopment Agency Board has decided to delay the land trade with Santa Fe Energy until all soil tests and methane gas tests have been completed and until the specific soil conditions of the properties are known. The estimated time to complete these studies is approximately three to six months.

Mr. Reynolds K. Ohai
April 27, 1987
Page 2.

In discussing your situation with Richard Weaver, we are willing to discuss an alternative which may help your situation. This alternative is to have soil tests specifically done on the property related to our trade with you. In addition, to discuss with Santa Fe Energy whether a separate trade can be worked out for the properties within the block that you wish to acquire.

At this time the Agency has not discussed this possibility with Santa Fe Energy. We are not aware whether or not they would be willing to trade these particular lots separately from the entire land trade agreement.

Both Richard Weaver and I feel that the circumstances surrounding the purchase/land trade with you have been delayed for very long time periods. Our negotiations with you have been no different than the Agency's negotiations with other property owners in the oil field area. Clearing the problems for development within the Oil Field Townsite Area is not easy and, as we are finding out, they are becoming more and more complicated.

If you would like to meet with Dick Weaver and myself to discuss the alternative suggested above, please give me a call.

Sincerely,
/S/
James P. Turba
Assistant to the Director
JPT:jc

EXHIBIT "E"

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670 -
P.O. Box 2120 - (213) 868-0511

February 2, 1988

Mr. Reynolds Ohai
8515 Chetle Avenue
Santa Fe Springs, CA 90670

Dear Mr. Ohai:

Pursuant to our phone conversation last week, I contacted Santa Fe Energy to inquire about the progress of our land trade with them. As you may have read in the papers, Santa Fe Energy has now been instructed by their parent company to sell their holdings in Santa Fe Springs. It is the intent of Santa Fe Energy to sell all of their land holdings to a private developer, preferably one developer.

In my conversations with Santa Fe Energy, they have stated to me that the Agency's land trade will be part of the package for their sale of the land to a developer. This news is somewhat of a shock to us, although knowing the corporate manipulations that have been happening in the Santa Fe companies this move [sic] doesn't surprise us.

Our land trade and sale to you was contingent on the Agency acquiring parcels from Santa Fe Energy. This apparently will not take place. The Agency will be in

contact with the potential buyers of the Santa Fe Energy land. It is our intention to pursue, with who ever the successful purchaser is, the land trade.

Sincerely,

/S/
James P. Turba
Assistant to the Director

EXHIBIT "F"

CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670-3658 - P.O. Box 2120 - (213) 868-0511

APPLICATION FOR
DEVELOPMENT PLAN APPROVAL

6/7/88

The undersigned hereby petition for Development Plan Approval:

LOCATION OF PROPERTY INVOLVED:
(give street address, or, if no address, give distance from nearest street intersection)

PROPERTY LOCATED SOUTH OF GARDNER AVENUE - EAST PROPERTY LINE 120' FROM WEST SIDE OF SPRINGDALE AVE.

RECORD OWNER OF THE PROPERTY:

Name: **M/M REYNOLDS OHAI**
Phone No: **(213) 945-3608**
Mailing Address: **8515 Chetle Avenue, Santa Fe Springs, CA 90670**

THE APPLICATION IS BEING FILED BY:
Record owner of the property. ←
Authorized agent of the owner. (*Written authorization must be attached to application.)*

Status of authorized agent: (*engineer, attorney, purchaser, developer, lessee, etc.)*

DESCRIBE THE DEVELOPMENT PROPOSAL. (*See reverse side of this sheet for information as to required accompanying plot plans, floor plans, elevations, etc.)*

1-Story Concrete Tilt-U Manufacturing Building - Approx. 11,600 ft.^{2} w/2 Office Locations - (945 ft.^{2} and 600 ft^2). Bldg Ht. ~ 18' High.

I HEREBY CERTIFY THAT the facts, statements and information furnished above are true and correct to the best of my knowledge and belief.

SIGNED /S/
[Reynolds K. Ohai]
(If signed by other than the record owner, written authorization must be attached to this application.

FOR DEPARTMENT USE ONLY:

Date filed: ___ Application Complete?___
AGENDA: ___ DEVELOPMENT PLAN APPROVAL CASE NO. ___

June 23, 1988

MEMORANDUM TO THE HONORABLE
REDEVELOPMENT AGENCY
MEMORANDUM TO THE PLANNING COMMISSION

AGENCY MEETING OF JULY 14, 1988
PLANNING COMMISSION MEETING OF
JUNE 27, 1988

NEW BUSINESS:

Development Plan Approval Case No. 499.
Request for approval to construct an industrial concrete tilt-up building totaling 11,600 sq.ft. and related improvements on 0.58 acre property located in the M-2, Heavy Manufacturing zone, located approximately 120 west of Springdale Avenue on the south side of Gardner Avenue, within the Consolidated Redevelopment Project. (Reynolds Ohai)

BACKGROUND

The proposed development is before the Planning Commission and Agency Board for approval because it is located within the Consolidated Redevelopment Project which requires Development Plan Approval to ensure proper attention is given to the goals of the adopted Redevelopment Plan for this area. Staff recommends that this application be denied because it is not in furtherance of the adopted Redevelopment Plan and is not pursuant [sic] to the goals of the adopted Redevelopment Plan for this area.

Mr. Ohai's property is located within the Santa Fe

Springs Townsite area. This area is bounded by Telegraph on the north, Norwalk on the west, Clark on the south and Bloomfield on the east. The "Townsite" area was initially included in the original Oil Field Redevelopment Project. The Oil Field Redevelopment Project had several amendments to it and was later incorporated with other redevelopment projects into the Consolidated Redevelopment Project. In the original Oil Field Redevelopment Project. [sic] Gardner Avenue along with two other local streets in the Townsite area were designated to be vacated.

Another goal of the Redevelopment Plan is to encourage the assemblage of the small lots into larger parcels for industrial development. The proposed elimination of Gardner Avenue creates a "landlock" condition for Mr. Ohai's property. Because of the landlocked condition, a small development on the property would not be in keeping with the goals of the Redevelopment Agency. [ITALICS OURS] If development were to occur on the property, the Redevelopment Agency, at a future date would be placed in the position to acquire the property and pay for the "new" improvements placed on the property. The land use goals and economic goals of the Redevelopment Plan would not be served if development occurred on the property.

There has been a long history of discussions with Mr. Ohai concerning his property. [ITALICS OURS] These discussions of which the most recent was on June 2, 1988, have focused around the various alternatives Mr. Ohai has in utilizing his property and fulfilling the goals in the Redevelopment Project area. Four basic alternatives have been looked at seriously by Mr. Ohai and Agency staff, they are:

1. That the Agency could assist in acquiring additional land adjacent to Mr. Ohai's property thereby opening a "window" to either Clark Street or Springdale Avenue (both are streets that would remain).

2. That Mr. Ohai pursue privately acquiring the additional land to open a "window" for the property.

3. That the Agency trade other Agency land to Mr. Ohai to eliminate his landlock condition.

4. That the Redevelopment Agency acquire Mr. Ohai's property.

Over the last seven years, [ITALICS OURS] Mr. Ohai and the Agency staff have seriously pursued each of these alternatives. At the present time, Agency staff and Mr. Ohai feel, that the various alternatives have been exhausted. At the June 2 meeting, it was suggested by staff, with concurrence from Mr. Ohai, that Mr. Ohai apply for Development Plan Approval for his property. Mr. Ohai stated he felt he needed to create a formal situation, whereby the application can be denied. Mr. Ohai can formally request the Redevelopment Agency to acquire his property after the DPA has been denied.

STAFF RECOMMENDATIONS

1. That the Planning Commission/Redevelopment Agency find that approval of Development Plan Approval Case No. 499 is not pursuant to and is not in furtherance of the Redevelopment Plan for the Consolidated Redevelopment Project.

2. That the Planning Commission/Redevelopment Agency deny approval of Development Plan Approval Case No. 499.

/S/
JAMES P. TURBA
Acting Director of
Planning and Development

JPT:ejp

AGENDA
REGULAR MEETING
SANTA FE SPRINGS PLANNING COMMISSION
CITY COUNCIL CHAMBERS

JUNE 27, 1988
3:00 p.m.

THE REPORTS LISTED ON THIS AGENDA ARE ON FILE IN THE DEPARTMENT OF PLANNING AND DEVELOPMENT AND ARE AVAILABLE FOR PUBLIC INSPECTION. QUESTIONS REGARDING THESE REPORTS MAY BE DIRECTED TO THE DEPARTMENT STAFF.

***

6. Development Plan Approval Case No. 499. Request for approval to construct a 11,600 sq ft concrete tilt-up industrial building and related facilities, on the 0.58 acre property located in the M-2, Heavy Manufacturing zone on Gardner Avenue, west of Springdale Avenue, within the Consolidated Redevelopment Project. (Reynolds Ohai)

***

15. ADJOURNMENT

CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670-3658
P.O. Box 2120 - (213) 868-0511

June 28, 1988

Re: Development Plan Approval
Case No. 499

Mr. & Mrs. Reynolds Ohai
8515 Chetle Avenue
Santa Fe Springs, CA 90670

Dear Mr. & Mrs. Ohai:

The Planning Commission at its meeting of June 27, 1988, took action on your request for approval to construct a 11,600 sq ft concrete tilt-up industrial building and related facilities, on the 0.58 acre property located in the M-2, Heavy Industrial Manufacturing zone on Gardner Avenue, west of Springdale Avenue, within the Consolidated Redevelopment Project.

The Planning Commission, after considerable deliberation and discussion, found that approval of Development Plan Approval Case No. 499 is not pursuant to and is not in furtherance of the Redevelopment Plan for the Consolidated Redevelopment Project, and, therefore, denied your request.

Because your property is located within the Consolidated Redevelopment Project, consideration of your request by the Redevelopment Agency Board is also required. Thus, this matter will be placed on the Agency Board's agenda for its meeting of July 14, 1988.

You are hereby notified that the time within which—

judicial review must be sought is governed by the provisions of California Code of Civil Procedure, Section 1094.6. [ITALICS OURS]

If you have any questions regarding this matter, please feel free to call.

Very truly yours,

/S/
JAMES P. TURBA
Acting Director of Planning and Development

JPT/pb

Encs.

cc: City Council
Mr. Donald R. Powell, City Manager

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA FE SPRINGS
CITY HALL, 11710 Telegraph Road 90670 -
P.O. Box 2120 - (213) 868-0511

July 22, 1988

Re: Development Plan Approval
Case No. 499

Mr. & Mrs. Reynolds Ohai
8515 Chetle Avenue
Santa Fe Springs, CA 90670

Dear Mr. & Mrs. Ohai:

The Redevelopment Agency Board at its meeting of July 14, 1988, took action on your request for approval to construct a 11,600 sq ft concrete tilt-up industrial building and related facilities, on the 0.58 acre property located in the M-2, Heavy Manufacturing zone on Gardner Avenue, west of Springdale Avenue, within the Consolidated Redevelopment Project.

Following its study of the matter, the Agency Board concurred with the Planning Commission's action at their meeting held June 27, 1988 to deny this request as stated in a letter to you dated June 28, 1988.

If you have any questions regarding this matter, please feel free to call.

Very truly yours,

/S/
JAMES P. TURBA
Acting Director of Planning and Development

JPT/pb

Encs.

cc: City Council
Mr. Donald R. Powell, City Manager

DRAFT

April 7, 1989

MEMORANDUM TO:

THE HONORABLE REDEVELOPMENT AGENCY BOARD
THE PLANNING COMMISSION

AGENCY BOARD MEETING OF APRIL ~~13~~, 1989
PLANNING COMMISSION MEETING OF APRIL ~~10~~, 1989

NEW BUSINESS
Development Plan Approval Case No. 528.
Request for approval of development plans to allow the construction of a 11,600 sq. ft. industrial warehouse building in the M-2, Heavy Manufacturing Zone located approximately 120' west of Springdale Avenue located south side of Gardner Avenue, within the Consolidated Redevelopment Project. (Reynolds Ohai)

BACKGROUND

The Planning Commission and Redevelopment Agency, at their respective meetings held June 27 and July 14, 1988, initially denied the applicant's request for Development Plan Approval Case No. 499 to construct a building on the subject site. It was determined that the project was not in furtherance of the adopted Redevelopment Plan.

At the time Development Plan Approval Case No. 499

was denied, the overall vision for development in the Oil Field Townsite area was for large parcel assemblage. Because of changing environmental mitigation regulations and the related costs for soil clean-up, it has become apparent that large scale assemblage of land within this area is not readily feasible in the near future. Thus, smaller developments within the Oil Field Townsite area may better serve the City and the Redevelopment Proejct [sic] at this time. It is noted that Development Plan Approval requires proper attentionbe [sic] given to the goals of the adopted Redevelopment Plan for this area. In addition, Development Plan Approval is to ensure that proper attention is given to the siting and appearance of the proposed development.

DEVELOPMENT PROPOSAL

PLOT PLAN: The applicant is proposing the construction of an approximately 11,600 sq. ft. industrial concrete tilt-up building on the subject 0.58 acre site. The building is proposed by applicant to be set back 15' from the Gardner Avenue street frontage. It is noted that the proposed distance is inconsistent with the 20' front yard building setback currently required along local industrial streets. The site plan indicates that 24 parking spaces will be provided onsite satisfying the parking requirements of Section 54.08 of the City's Zoning Ordinance. The site plan also indicates that the proposed building will be provided with two overhead roll-up loading doors along the west side of the subject building which will allow the building to be divided into two separate industrial units.

ELEVATIONS: The elevations submitted for the proposed 18' high single story building, indicate that the concrete tilt-up panels are proposed to be painted a melon

green color with two 8" wide brown color bands offset by a beige, vertically fluted accent band along the roof line. In addition, the elevations indicate that the building will provide two recessed and landscaped office entryways featuring tinted solar glass office windows.

FLOOR PLAN: The floor plans indicate that the proposed 11,600 sq ft building is designed to be divisible into two truck served units to be used primarily for small industrial manufacturing purposes with incidental office areas.

ENVIRONMENTAL DOCUMENT

Because the project is located within the Consolidated Redevelopment Project for which an Environmental Impact Report was previously prepared as required by law, further environmental documents are not required if it is determined that the project is pursuant to and in furtherance of the adopted Redevelopment Plan and is within the scope of the program EIR which was prepared for said Redevelopment Plan and that no new significant affects could occur or new mitigation measures or environmental document would be required.

On October 10, 1986, [ITALICS OURS] GeoScience Analytical Inc., an environmental monitoring firm contracted by the Department of Conservation, Division of Oil and Gas, to conduct methane gas studies, concluded that certain areas within the general oil field area have potentially hazardous levels of methane gas in subsurface soils area. As a result of the methane gas study, all projects proposed within the general Oil Field area identified in the study are required to first conduct soil gas studies and implement appropriate mitigation

measures prior to the issuance of a building permit. A condition of approval has been included with this project which will require that said soil and soil gas studies be conducted and that appropriate mitigation measures be implemented.

STAFF COMMENTS

The Planning Commission/Redevelopment Agency will note that staff has contacted the applicant and discussed the issues surrounding this case, and the suggested conditions of approval set forth herein.

SUGGESTED CONDITIONS OF APPROVAL.

1. That any abandoned oil wells on the subject property or adjacent to the proposed building which have not been abandoned in accordance with the requirements of the Fire Department and the State Division of Oil and Gas and all other applicable regulations, shall be so abandoned. The applicant/property owner shall obtain and submit to the Department of Planning and Development written clearance or approval from the State Division of Oil and Gas to build over or within close proximity to any abandoned oil well on or adjacent to the subject site prior to the issuance of a building permit for the proposed building. Any abandoned oil well which will be located under the proposed building shall be vented in accordance with the requirements of the Fire Department and Building Code.

2. That the applicant shall submit for approval a

detailed landscaped and automatic sprinkler plan for all onsite and parkway landscape areas. Said landscape plan shall indicate the location and type of all plant materials to be used and shall include an automatic sprinkler system to provide full coverage for all landscape areas.

3. That no portion of the required off-street parking and loading areas shall be used for outdoor storage, manufacturing or similar use at any time.

4. That all signs, fences, walls and similar improvements for the industrial development shall be subject to the approval of the Director of Planning and Development.

5. That a sufficient number of approved outdoor trash enclosures shall be provided on the subject site, subject to the approval of the Director of Planning and Development.

6. That all public improvements needed to serve the subject property as determined by the City Engineer shall be installed in accordance with the city's specifications and the requirements of the City Engineer. Said improvements shall include, but are not limited to, the following:

   A. The installation of full street improvements to City standards.

   B. The owner/developer shall pay to the City the entire cost for design, engineering, construction and inspection of a 12" water main from the intersection of Clark Avenue and Springdale Avenue to the

proposed new development on Gardner Avenue.

C. The owner/developer shall install fire hydrants as required by the City Fire Department.

D. The owner/developer shall extend the nearest available sanitary sewer to the proposed project location if sewer capacity is unavailable; a sewer study shall be conducted by the City Engineer.

E. The owner/developer shall pay to the City the entire cost of design, engineering, installation and inspection of street lights on Gardner Avenue.

F. The owner/developer shall provide storm drains, catch basins connector pipes, [sic] etc., as required for handling drainage and run-off from the subject property; this will be determined by a hydrology study conducted by a professional Civil Engineer and submitted to the City Engineer for approval.

G. The owner/developer shall comply with all requirements of the Department of County Engineering-Facilities, and shall make application for and pay the sewer maintenance fee.

H. The owner/developer shall ensure that all oil wells are properly abandoned in the right-of-way and that all pipe lines and

related lines within the public right-of-way are removed from the right-of-way regardless of their depth.

I. The owner/developer shall pay to the City the estimated cost for the installation of street name signs, traffic control signs and pavement markings.

J. The owner/developer shall submit to the City Engineer a soils report to determine structural section for the pavement.

7. That a soil and soil gas study shall be conducted on the subject site prior to the issuance of building permits and appropriate mitigation measures implemented if/and as required by the Director of Planning and Development.

8. That the applicant shall comply with all other conditions that may be imposed by the City's Environmental Review and Advisory Committee.

9. That the subject property shall be developed substantially in accordance with the site plan, including the 20' building setback requirement for Gardner Avenue, elevations, floor plans and related improvement plans submitted by the applicant and on file with this case.

10. That by accepting these conditions of approval the applicant acknowledges that any representations, actions or approvals by the City Planning Commission or Redevelopment Agency does not indicate any representation that the regulatory requirements of any federal, state or local agency

have been met by the applicant.

11. That the final plot plan, floor plan and elevations for the proposed industrial building and all impertinent improvements shall be subject to the approval of the Director of Planning and Development.

12. That all other requirements of the City's Zoning Ordinance, Building Code and other applicable regulations shall be complied with.

13. That Development Plan Approval Case No. 528 shall not be valid until approved by the Redevelopment Agency Board and shall be subject to any other conditions the Board may deem necessary to impose.

14. Standard acceptance clause.

RECOMMENDATION

The staff recommends that the Planning Commission/Redevelopment Agency take the following action:

1. That the Planning Commission/Redevelopment Agency find that approval of Development Plan Approval Case No. 528 is not inconsistent with the uses of Redevelopment Plan for the Consolidated Redevelopment Project and that the proposed project is within the scope of the program EIR which was prepared for said Redevelopment Plan and that no new significant effects could occur or no new mitigated measures

or environmental document would be required.

2. That the Planning Commission/Redevelopment Agency approve Development Plan Approval Case No. 528, subject to the suggested conditions of approval.

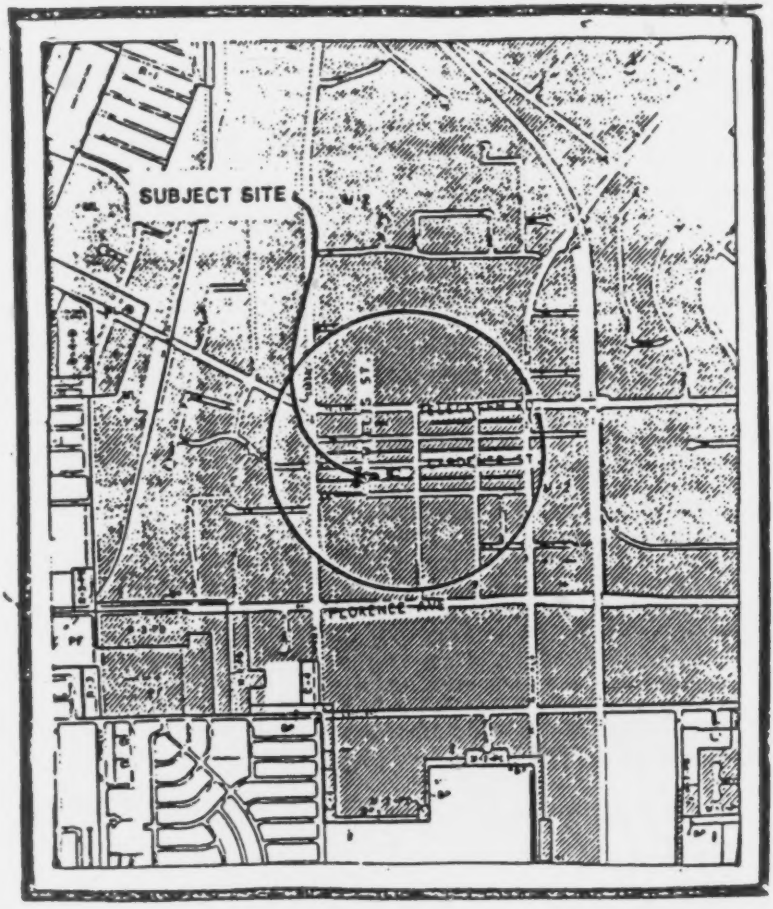
/S/
ROBERT G. ORPIN
Director of Planning and Development
/Executive Director

RGO/pb

DATA\DPA528

App. 99

Map with 4/7/89 Memorandum



LOCATION MAP

DEVELOPMENT PLAN APPROVAL CASE NO. 528

N

no scale

CONSTITUTION OF UNITED STATES

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Ratified December 15, 1791.]

Fourteenth Amendment

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

App. 101

SECOND AMENDED

REDEVELOPMENT PLAN

FOR

OIL FIELD REDEVELOPMENT PROJECT

Original Redevelopment Plan
Adopted by Ordinance No. 441
August 9, 1973

First Amended Redevelopment Plan
Adopted by Ordinance No. 482
August 14, 1975

Second Amended Redevelopment Plan
Adopted by Ordinance No. 510
December 14, 1976

NOTE: *Deletions from the First Amended Plan are lined through; new wording added by this amendment is in italics.*

CITY OF SANTA FE SPRINGS, CALIFORNIA

App. 102

Second

AMENDED

REDEVELOPMENT PLAN

for the

OIL FIELD REDEVELOPMENT PROJECT

I. INTRODUCTION

This document is the *second* amended Redevelopment Plan for the Oil Field Redevelopment Project. This *second* amended Plan has been prepared by the Redevelopment Agency of the City of Santa Fe Springs, in conformance to the General Plan of the City of Santa Fe Springs, pursuant to the Community Redevelopment Law of the State of California, the United States Constitution, the State of California Constitution, and all applicable local laws and ordinances.

On August 9, 1973, the City Council approved the Oil Field Redevelopment Plan *and on August 9, 1975 the City Council adopted an amended Oil Field Redevelopment Plan which included additional areas as well as certain changes in the text of the Plan.* ~~for a portion of the City as a means of remedying and alleviating conditions of blight within that area. Studies have revealed that some surrounding properties also have blighting conditions, and it is therefore necessary and desirable to amend the Redevelopment Plan and~~

~~expand the Project area boundaries in order to remedy and alleviate the blighting conditions that exist, both in the original Project area and in the north and south additions.~~

***

The Amended Redevelopment Project is intended to be an owner participation project and the Amended Redevelopment Plan provides that, wherever possible, owners of real property in the proposed project area can remain as owner participants in the redevelopment of the area, pursuant to the rules promulgated by the Agency. With the emphasis on owner participation, the acquisition of property by the Agency shall be limited to that necessary to implement this Amended Redevelopment Plan.

II. GENERAL DEFINITIONS

The following terms are defined as they will be used generally in this Plan, unless the context otherwise requires a different interpretation:

A. "Plan" means the *second* amended Redevelopment Plan for the Oil Field Redevelopment Project.

B. "Map" means the *second* amended Redevelopment Plan Map for the Oil Field Redevelopment Project, *Exhibit "A" hereto.*

C. "Project" means the *second* amended Oil Field Redevelopment Project.

D. "Project area" means the area included within the boundaries of the *second* amended Oil Field Redevelopment Project. ~~including the north and south additions~~.

E. "Agency" means the Redevelopment Agency of the City of Santa Fe Springs.

F. "City" means the City of Santa Fe Springs, California.

G. *"City Council" means the City Council of the City of Santa Fe Springs.*

H. "Planning Commission" means the Planning Commission of the City of Santa Fe Springs.

I. "County" means the County of Los Angeles.

J. "State" means the State of California.

K. "Person" means any individual, or any public or private entity.

L. "Redevelopment Law" means the Community Redevelopment Law of the State of California (California Health and Safety Code, Section 33000 et seq.).

***

IV. PROJECT AREA PROPOSALS

A. Project Area Proposals Regarding Land Use

The Project area proposals for land use are, in general, depicted on the Map ~~(Exhibit "A")~~ and as follows:

(1) Industrial -- including offices, research and development, warehousing, manufacturing, storage and appurtenant uses compatible to the development of an industrial area.

(2) Commercial and service type uses which may be needed to serve the industrial area and which will be compatible with and not interfere with the orderly development of the industrial area.

(3) Public and semi-public uses of a governmental, cultural, recreational, medical or educational nature.

(4) Electrical distribution substations.

(5) Open space, parks, recreation facilities and landscaped areas.

(6) Preservation of areas and/or buildings of historical significance.

(7) Dwellings used as caretakers residences. [sic]

(8) Public and/or private parking.

(9) Landscape screening and appearance

improvement.

(10) Buffering between incompatible land uses either within or outside of Project area.

***

B. Project Area Proposals Regarding Open Space, Street Layout, Building Restrictions, Number of Dwelling Units, and Property for Public Use.

***

(2) Street Layout. The Plan proposes that the layout of streets will generally be as shown on the Map ~~(Exhibit "A")~~ and as follows:

(a) Major Highways -- Bloomfield Avenue, Florence Avenue, Meyer Road and Norwalk Boulevard, ~~Santa Fe Springs Road~~, Shoemaker Avenue and Telegraph Road.

(b) Secondary Highways -- Greenleaf Avenue, Lakeland Road, ~~Los Nietos Road~~ and Shoemaker Avenue.

(c) Local Streets -- Clark Street, Forest Street, *Freeman*

Avenue, Laurel Avenue, Painter Avenue, Park Avenue, Perris Avenue, Romandel Avenue and Spring Street.

(d) Other local streets as may be needed to serve the Project area.

The Plan contemplates the acquisition of any rights-of-way needed for the installation or widening of the above-referenced streets and their full improvement to their ultimate planned width in accordance with City standards.

In addition certain existing dedicated street and alley rights-of-way may be vacated in order to facilitate the assembly of land of appropriate size for proper development. *All existing street and alley rights-of-way not shown on the Map ~~(Exhibit "A")~~ are intended to be vacated.* [ITALICS OURS]

***

V. PROPOSED REDEVELOPMENT ACTIONS

A. General

The Agency proposes to eliminate and prevent the reoccurrence of blight in the Project area by a combination of actions [ITALICS OURS] which may include:

1. Installation, construction, reconstruction, realignment or expansion of streets, grade separations, utilities, noise barriers, open spaces, landscaping or other public improvements and facilities by public and/or private action.

2. The vacation and removal of certain streets and alleys.

3. Providing for participation by owners and tenants presently located in the Project area.

4. Acquisition of certain real property, *including partial or limited acquisition (i.e., acquisition of buildings or structures without acquiring the land.)*

5. The provision of relocation assistance to displaced residential and nonresidential occupants and/or business concerns ~~in accordance with applicable law~~.

6. Management of property under the ownership and control of the Agency.

7. Renovation of certain buildings, structures and improvements.

8. Demolition and removal of certain buildings, structures and

improvements.

9. Abatement and/or removal of certain nonconforming uses.

10. Disposition of property acquired for uses in accordance with this Plan.

11. Redevelopment of land for uses in accordance with this Plan by private enterprise or public agencies.

B. Property Acquisition

(1) Acquisition of Real Property.

Except as specifically exempt herein, the Agency may acquire, but it not required [sic] to acquire, all or part of the real property located in the Project area by gift, device, exchange, purchase, eminent domain, or any other lawful method.

It is in the public interest and is necessary in order to eliminate the conditions requiring redevelopment and in order to execute the Plan, for the power of eminent domain to be employed by the Agency to acquire real property in the Project Area.

***

I. Property Disposition and Development

(1) General

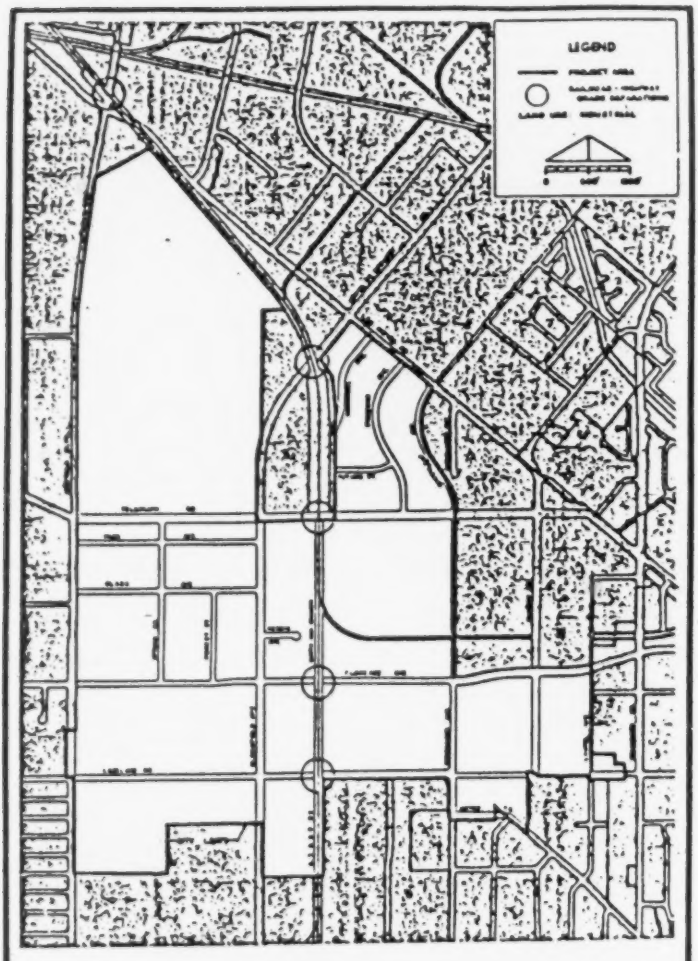
For the purpose of this Plan, the Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust, or otherwise dispose of any interest in real property acquired by it in the Project area to the extent permitted by law. The Agency is authorized to dispose of real property by lease or sale without public bidding.

***

VII. ACTIONS BY THE CITY

The City of Santa Fe Springs shall aid and cooperate with the Agency in carrying out this Plan and shall take all actions necessary to ensure the continued fulfillment of the purposes of this Plan and to prevent the recurrence or spread in the area of conditions causing blight and, in that regard, the City may expend money and undertake and complete any proceedings necessary to carry

out the Project contemplated in this Plan.



SECOND AMENDED REDEVELOPMENT PLAN MAP

OIL FIELD REDEVELOPMENT PROJECT

EXHIBIT "A"

SEPT. 26, 1978

(2)

Supreme Court, U.S.
FILED
DEC 17 1993
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No. 93-806

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

REYNOLDS K. OHAI,
Petitioner,
vs.
COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Respondents COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS and CITY OF SANTA FE SPRINGS (hereafter "Respondents") respectfully request denial of the petition for certiorari filed herein by petitioner REYNOLDS K. OHAI (hereafter "Petitioner").

OPENING SUMMARY OF ARGUMENT

Petitioner asks this Court to review a unanimous, unpublished decision of the California Court of Appeal. The decision affirms a trial court order which dismissed Petitioner's inverse condemnation suit at the pleadings stage.

In the Court of Appeal, Petitioner argued that his pleadings state a cause of action for monetary damages arising from a temporary regulatory taking of his land. The Court of Appeal rejected that argument in a written opinion. As the opinion explains, Petitioner's pleadings contain only one allegation of government action that deprived him of substantially all use of his land, but that allegation is an obvious sham.

Petitioner asserts that California's disposition of his case raises issues under the Fifth and Fourteenth Amendments to the federal Constitution. On that basis, he now petitions this Court for certiorari. There are a variety of reasons why his petition should be denied.

First, it fails to comply with this Court's rules governing the contents of such petitions. It lacks any discussion as to why certiorari is appropriate given the criteria set forth in this Court's Rule 10.1. Pages 7–8 of this brief, *post*. The petition also omits the required showing that Petitioner raised federal questions at some stage of the California appellate process. Pages 8–9 of this brief, *post*.

In addition to being procedurally flawed, the petition is substantively unmeritorious in every respect. For example, there is no validity to Petitioner's claim that the disposition of his suit conflicts with this Court's decision in *First Lutheran Church* v. *Los Angeles County*, 482 U.S. 304 (1987) (*First English I*). Instead, the two cases are readily distinguishable. In *First English I*, this Court granted certiorari because the Court of Appeal rejected a landowner's "temporary taking" theory of monetary damages *without first considering whether a regulatory taking had occurred.* In the present case, however, the Court of Appeal did not dispose of Petitioner's suit until *after* it expressly determined that there was no regulatory taking of Petitioner's land. Pages 10–12 of this brief, *post*.

Petitioner challenges the Court of Appeal's determination that no regulatory taking occurred. He admits, however, that this determination resulted from the insufficiency of his allegations under California's "technical" rules of pleading. The Court of Appeal's determination thus fails to present any federal question, because it involves only matters of state pleading practice. Page 13 of this brief, *post*. Similarly, no federal question is implicated by Petitioner's contention that the California courts failed to follow their own pleading rules when evaluating his case. Page 13 of this brief, *post*.

Petitioner also attacks the California rules of pleading themselves. This attack presents no unsettled federal questions, though. It is well established that a takings suit can be dismissed at the pleadings stage without offending either the Fifth or Fourteenth Amendments. Pages 14–17 of this brief, *post*. The petition also fails to show that California courts deprived Petitioner of any federally protected right when they denied him leave to amend his pleadings for a third time. Pages 18–21 of this brief, *post*. And no federal question arises from California courts' refusal to accept the truth of Petitioner's sham allegations. Pages 21–23 of this brief, *post*.

The Petition fails to demonstrate any conflict between California takings jurisprudence and that of other jurisdictions such as South Carolina and the Ninth Circuit. Pages 23–28 of this brief, *post*. The instant case thus provides no vehicle for addressing Petitioner's arguments that such conflict would contravene the Equal Protection Clause and lead to undesirable forum shopping. Page 28 of this brief, *post*.

Granting certiorari would be inappropriate even if the petition did raise an unsettled federal question. At most, the proper disposition would be a remand to the Court of Appeal, so that it can determine whether to dispose of Petitioner's suit on alternative state grounds which the trial court employed to dismiss the case. Page 29, *post*.

STATEMENT OF THE CASE

Respondents are a California city and its community development commission. Petitioner owns land in the city. Pet. for Cert. 3–5; App. to Pet. for Cert. 1, 3, 11, 47–48.

In 1973, Respondents adopted a redevelopment plan for the part of town where Petitioner's property is located. Respondents later amended the plan twice. As amended, *the plan neither restricted, diminished nor in any way limited the uses which Petitioner could lawfully make of his land.* Pet. for Cert. 2–5; App. to Pet. for Cert. 11, 48, 101–11.

The amended redevelopment plan announced that Gardner Avenue (a street adjoining Petitioner's land) was *intended* to be vacated at some unspecified future date. That date has yet to come, though: Gardner Avenue remains an open thoroughfare even to this day, albeit in a poorly maintained condition. Pet. for Cert. 3–6, 13, 16–18, 22; App. to Pet. for Cert. 4, 12, 34–35, 37–38.

The most recent amendment to the redevelopment plan occurred in 1976. Nearly a dozen years later, Petitioner filed this suit against Respondents. Pet. for Cert. 2, 7; App. to Pet. for Cert. 11–12, 48, 101.

In his initial pleading, Petitioner alleged that Respondents had taken his land, without compensation, by their act of vacating Gardner Avenue "on paper." In that same pleading, however, Petitioner also alleged that Respondents had taken " . . . no action to officially close Gardner Avenue, which is still a public street which fronts the subject property . . . ." Petitioner verified that pleading, i.e., he affirmed the truth of its allegations under penalty of perjury. Pet. for Cert. 7–8, 17–18; App. to Pet. for Cert. 11–12, text & n. 2.

Respondents demurred to Petitioner's original pleading. The trial court sustained that demurrer with leave to amend. Pet. for Cert. 9.

Petitioner then submitted a first amended complaint. Like its predecessor, it alleged that Respondents had taken " . . . no action to officially close Gardner Avenue, which is still a public street which fronts the subject property . . . ." Pet. for Cert. 9, 18–19; App. to Pet. for Cert. 11–12, text & n. 2.

Respondents again demurred. The trial court sustained that demurrer, again with leave to amend, on the ground that the first amended complaint failed to state a cause of action. Pet. for Cert. 9–10.

Two years later, Petitioner filed a second amended complaint. This time he tried a different tack. He alleged that he " . . . was informed and believes that Gardner Avenue was officially closed and abandoned by [Respondents] . . . , which action had the effect of landlocking [his] property." Pet. for Cert. 11, 20–21; App. to Pet. for Cert. 11.

Respondents again demurred. The trial court sustained that demurrer as well. The trial court reasoned that Petitioner's second amended complaint was barred by (1) admissions in his prior pleadings, (2) the statute of limitations, (3) a failure to exhaust administrative remedies, and (4) principles of res judicata. Pet. for Cert. 11–12; App. to Pet. for Cert. 24, 33–34, 40.

This time the trial court denied leave to amend and dismissed the case. Petitioner appealed. Pet. for Cert. 12; App. to Pet. for Cert. 9, 14–15, 41.

The Court of Appeal undertook a de novo review of Petitioner's second amended complaint. In so doing, it applied the long settled rule which California appellate courts use in reviewing suits dismissed at the pleading stage. Specifically, the Court of Appeal assumed the truth of all properly pleaded material facts in Petitioner's second amended complaint. App. to Pet. for Cert. 9.

The Court of Appeal invoked a California exception to this rule, though. The exception is designed to prevent sham pleading. It applies when a litigant files an amended pleading which directly and inexplicably contradicts allegations in an earlier pleading. In such a case, the reviewing court takes the prior pleading's allegations into consideration when ruling on a demurrer to the amended pleading. App. to Pet. for Cert. 11–12.

The Court of Appeal applied that exception as follows: Petitioner's original and first amended pleadings *both* alleged that Gardner Avenue had *never* been closed. On the other hand, his second amended complaint *did* allege the closure of Gardner Avenue. Because Petitioner failed to explain the inconsistency, the Court of Appeal disregarded the second amended complaint's unexplained allegation that Gardner Avenue was closed. App. to Pet. for Cert. 12.

Stripped of that sham allegation, the second amended complaint failed to allege any government action which deprived Petitioner of substantially all use of his property. The Court of Appeal accordingly held that Petitioner had failed to plead a cause of action for inverse condemnation. On that basis, the Court of Appeal upheld the trial court's decision to sustain Respondents' demurrer. App. to Pet. for Cert. 10, 12–13.

The Court of Appeal next considered whether the trial court had erred in denying Petitioner leave to file a third amended pleading. Under well settled rules of California appellate procedure, the burden of showing such error is on the pleader. To meet his burden, the pleader must explain, at some point prior to oral argument on appeal, how his complaint can be amended to state a cause of action. Because Petitioner *never* offered such an explanation, in either the trial or appellate court, the Court of Appeal affirmed the trial court's denial of leave to amend. App. to Pet. for Cert. 10, 13–14.

California's seven-member Supreme Court unanimously denied Petitioner's request for discretionary review. Pet. for Cert. 2; App. to Pet. for Cert. 7. The instant petition for certiorari followed. Via this suit, Petitioner evidently hopes to lever a settlement wherein Respondents' taxpayers will assume the cost of (1) testing his land for toxic waste, and (2) installing off-site improvements for his property's benefit. Pet. for Cert. 10–11.

ARGUMENT

I. *The Petition Should Be Denied For Failure To Comply With This Court's Rules.*

A. *The Petition Fails To Discuss Why Certiorari Should Be Granted Pursuant To The Reasons In Rule 10.1.*

Under this Court's Rule 14.1(j), a certiorari petition must include direct and concise argument explaining why a case fits the Rule 10.1 criteria for granting certiorari.

Despite these rules, the petition in the instant litigation rambles at length without ever mentioning even one of the Rule 10.1 criteria. The petition can and should be denied on this basis alone. U.S.Sup.Ct. Rule 14.5; see, *e.g.*, *Glick Brothers Lumber Co.* v. *Bowles, Price Administrator*, 325 U.S. 877, rehearing denied, 326 U.S. 804 (1945); *Kennemer* v. *Billington*, 323 U.S. 709 (1944).

B. *The Petition Fails To Show Proper Presentation Of Any Federal Question In The State Court System.*

In reviewing state court judgments, this Court, with very rare exceptions, has refused to consider claims that were neither raised nor addressed in the state court system. *Yee* v. *Escondido*, 503 U.S. __, __, 112 S.Ct. 1522, 1531, 118 L.Ed.2d 153, 168–69 (1992). To guard against improvident grants of certiorari, this Court's Rule 14.1(h) therefore requires state court certiorari petitions to specify when and how the pertinent federal questions were presented in the state appellate courts.

The petition in the present case disregards this rule altogether. At no point in his lengthy petition or voluminous appendix does Petitioner indicate raising any federal claims before the California Court of Appeal. This omission by itself is sufficient reason to deny certiorari. See *Lynum* v. *Illinois*, 368 U.S. 908, 909, 912 (1961) (FRANKFURTER, J., dissenting).

Significantly, the Court of Appeal *never* addressed *any* federal questions, App. to Pet. for Cert. 9–14, as Petitioner himself acknowledges. Pet. for Cert. 12. Petitioner also states that the trial court dismissed his suit without ruling on any federal questions. Pet. for Cert. 11.

When a state appellate court fails to pass upon a federal question, it is assumed, absent a contrary showing, that the failure was due to want of proper presentation in the state courts. *Webb* v. *Webb*, 451 U.S. 493, 496–97 (1981). In such circumstances, this Court ordinarily refuses to consider the federal claim, even if it was presented in the trial court, *Hiawassee Power Co.* v. *Carolina-Tenn. Co.*, 252 U.S. 341, 343–44 (1919), or asserted in an unsuccessful state supreme court petition for discretionary review. *Yee* v. *Escondido*, *supra*, 503 U.S., at __, 112 S.Ct., at 1531, 118 L.Ed.2d, at 168–69.

It should be noted that Petitioner neglected to assert most of his "federal" claims at *any* stage of the California court proceedings. For example, he *never* claimed in state court that California's rules of pleading are unconstitutional, or that they are so hopelessly in conflict with other jurisdictions' rules as to pose an Equal Protection issue.

The petition should accordingly be denied for failing to show proper presentation of any federal question in the state court system.

II. *The Petition Should Be Denied, Because This Case Does Not Satisfy Any Of The Criteria For Granting Certiorari.*

This Court lacks jurisdiction to review a state court decision unless it necessarily presents a federal question. 28 U.S.C. § 1257(a); *Mental Hygiene Dept.* v. *Kirchner*, 380 U.S. 194, 197 (1965). Even when a federal issue is involved. this Court will deny certiorari, unless the issue is either (1) a *particularly important* but *unsettled* question, or (2) one that has divided lower courts. U.S.Sup.Ct. Rule

10.1; *Yee* v. *Escondido*, *supra*, 503 U.S. __, __, 112 S.Ct. 1522, 1533, 118 L.Ed.2d 153, 170–71; *Rockford Life Ins. Co.* v. *Ill. Dept. of Rev.*, 482 U.S. 182, 184, n. 3 (1987). As explained below, the instant case meets none of the foregoing criteria.

A. *Dismissal of Petitioner's Suit Does Not Conflict With The* First English I *Decision.*

This Court's Rule 10.1(c) authorizes certiorari where a state court has decided a federal question in a way that conflicts with this Court's decisions. In apparent reliance on that rule, Petitioner claims that the Court of Appeal's disposition of his case conflict with this Court's holding in *First English I*, *supra*, 482 U.S. 304. Pet. for Cert. 7–9, 21, 24. Petitioner is mistaken.

In *First English I*, the plaintiff landowner pleaded that a county ordinance had denied it all use of its property. On that basis, the landowner sued the county and its flood control district for monetary damages. 482 U.S., at 308–09.

The trial court entered an order striking the landowner's allegation that it had been denied all use of its property. The California Court of Appeal affirmed that order. Both courts reasoned that such an allegation was immaterial to a cause of action for monetary damages. They reached this conclusion by assuming that the Fifth and Fourteenth Amendments do not require monetary compensation as a remedy for temporary regulatory takings. As a result, the California courts rejected the landowner's inverse condemnation cause of action without even bothering to determine whether the landowner had adequately pleaded a denial of all use of its land. 482 US., at 306–13, 321–22.

The landowner appealed to this Court. At that juncture, the California Court of Appeal had disposed of the landowner's takings claim without considering whether the landowner had pleaded a taking. The landowner's appeal thus came within this Court's jurisdiction by presenting a federal constitutional question, namely, whether the Fifth and Fourteenth Amendments require payment of compensation when a land use regulation temporarily deprives a landowner of all use of his property. 482 U.S., at 306–07, 310–13.

This Court answered that question in the affirmative. It therefore remanded the case to the California Court of Appeal to determine, among other things, whether the challenged ordinance actually denied the landowner all use of its property. 482 U.S., at 306–07, 310–13, 321–22.

In essence, the *First English I* Court held that it was constitutional error to dismiss a temporary regulatory takings claim without first determining whether the challenged regulation denied the landowner all use of its property. The instant case does not share that constitutional vice, however.

In the present case, the Court of Appeal expressly determined that Respondents' regulation has *not* deprived Petitioner of substantially all use of his property. App. to Pet. for Cert. 10–11, 12–13. It is on *that* basis that the Court of Appeal rejected Petitioner's takings claim, *id.*, at 10, 13, *not* out of some misapprehension as to federal constitutional requirements. The Court of Appeal's holding in the present case is therefore distinguishable from, rather than in conflict with, this Court's decision in *First English I*.

It is instructive to examine the subsequent history of the *First English I* case. The California Court of Appeal considered the case on remand in *First English Evangelical Lutheran Church* v. *County of Los Angeles*, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989), cert. denied, 493 U.S. 1056 (1990) (*First English II*). On that remand, the Court of Appeal specifically reached the question of whether the challenged ordinance denied the landowner all use of its property. The Court of Appeal held that it did *not*. For that reason, the court reaffirmed its original decision dismissing the landowner's inverse condemnation claim. 210 Cal.App.3d, at 1356, 1359–61, 1367–72, 1374, 268 Cal.Rptr., at 894, 896–98, 902–07. The landowner then petitioned for certiorari, and *this Court denied the petition.* 493 U.S. 1056.

Certiorari should likewise be denied in the present case. Like the *First English II* court, the Court of Appeal in the instant case has determined that the challenged regulation does *not* deny Petitioner substantially all use of his property. Because there was *no* taking, the question decided in *First English I*—whether the federal constitution mandates compensation for temporary regulatory takings—simply does not arise. *Agins* v. *Tiburon*, 447 U.S. 255, 263 (1980); cf. *First English I, supra*, 482 U.S., at 311 (distinguishing *Agins, supra*).

There is no conflict whatsoever between the outcome of the present case and *First English I*.

B. *The Dismissal Of Petitioner's Suit Presents No Unsettled Federal Question.*

1. *No Federal Question Is Raised By The Application of California's Pleading Rules To Petitioner's Complaint.*

a. *Dismissal Of A Technically Insufficient Pleading Involves No Federal Question.*

Petitioner appears to attack the Court of Appeal's determination that Respondents never deprived him of substantially all use of his property. He complains that the Court of Appeal should not have reached this determination by requiring " . . . strict compliance with technical rules of pleading . . . ." Pet. for Cert. 22–23.

This presents no federal question. When a state court decides a case on the technical insufficiency of a pleading, that is a state law matter over which this Court lacks jurisdiction. *Commercial Bank* v. *Rochester*, 82 U.S. 639, 642 (1872); *Agins* v. *Tiburon*, *supra*, 447 U.S., at 260, n. 6.

b. *Application Of Local Pleading Rules Is Strictly A Matter Of State Law.*

Petitioner also complains that the California courts misapplied their own pleading rules when deciding his case. Pet. for Cert. 11–16, text & n. 14. This, too, presents a state law matter, as opposed to a federal question over which this Court can exert jurisdiction: This Court must respect the California Court of Appeal's opinion on matters of local pleading law. *MacDonald, Sommer & Frates* v. *Yolo County*, 477 U.S. 340, 352, n. 8, ¶ 1, rehearing denied, 478 U.S. 1035 (1986).

2. *Petitioner's Attack On The Pleading Rules Themselves Presents No Federal Question.*

Petitioner next seems to attack the constitutionality of California's pleading rules themselves. As discussed below, this challenge raises no unsettled federal question.

a. *No Unsettled Federal Question Is Presented By The Rule Permitting Takings Claims To Be Dismissed At The Pleadings Stage.*

i. *It Is Settled That Such A Dismissal Does Not Offend The Takings Clause.*

Petitioner seems to argue that an inverse condemnation suit cannot be dismissed via demurrer to the pleadings without invading rights protected by the Fifth Amendment's Takings Clause. Pet. for Cert. 12, 14, 22–23, 29. This claim fails to present an *unsettled* federal question, though.

Instead, the law is *settled* to the *contrary* of Petitioner's claim. This Court has repeatedly held that a complaint, to invoke the constitutional protection of the Takings Clause, must specifically allege facts showing a deprivation of property without just compensation. See, *e.g.*, *Beaumont, S. L. & W. Ry.* v. *U.S.*, 282 U.S. 74, 88–89 (1930); *Aetna Insurance Co.* v. *Hyde*, 275 U.S. 440, 447–48 (1928); see also *Denver Stock Yard Co.* v. *U.S.*, 304 U.S. 470, 484–85 (1938); cf. *Missouri Pacific R. Co.* v. *Norwood*, 283 U.S. 249, 250, 254–55, 258, modified, 283 U.S. 809 (1931); *Pacific States Co.* v. *White*, 296 U.S. 176, 184–85 (1935).

Indeed, despite Petitioner's belief to the contrary, Pet. for Cert. 14, this Court has frequently affirmed California court judgments that dismissed takings cases via demurrer to the pleadings. See, *e.g.*, *Yee* v. *Escondido*, *supra*, 503 U.S.,

__, __, __, __, 112 S.Ct. 1522, 1526, 1527, 1534, 118 L.Ed.2d 153, 162, 164, 172; *MacDonald, Sommer & Frates* v. *Yolo County, supra*, 477 U.S. 340, 342, 353; *Agins* v. *Tiburon, supra*, 447 U.S. 255, 257, 258, 263.

Numerous lower court decisions recognize that constitutional rights are *not* infringed when an insufficient or defective complaint is dismissed. *Belmar Drive-In Theatre* v. *Hgw. Com.*, 34 Ill.2d 544, 549, 216 N.E.2d 788, 792 (1966); *Deasey* v. *City of Chicago*, 412 Ill. 151, 155, 105 N.E.2d 727, 729 (1952); *Harvey* v. *Brewer*, 166 Ill.App.3d 253, 259, 116 Ill.Dec. 724, 728, 519 N.E.2d 939, 943 (1987); *Harvey* v. *Mackay*, 109 Ill.App.3d 582, 589, 65 Ill.Dec. 167, 172, 440 N.E.2d 1022, 1027 (1982), appeal denied, 92 Ill.2d 574 (1983); *Berlin* v. Nathan, 64 Ill.App.3d 940, 951, 21 Ill.Dec. 682, 690, 381 N.E.2d 1367, 1374 (1978), appeal denied, 72 Ill.2d 581, cert. denied, 444 U.S. 828, rehearing denied, 444 U.S. 974 (1979); *DiSanto* v. *City of Warrenville*, 59 Ill.App.3d 931, 940, 17 Ill.Dec. 289, 295, 376 N.E.2d 288, 294, appeal denied, 71 Ill.2d 607 (1978); *State Bk. of Lombard* v. *Segovia*, 49 Ill.App.3d 682, 685, 7 Ill.Dec. 527, 529, 364 N.E.2d 688, 691 (1977); *County of Champaign* v. *Anthony*, 33 Ill.App.3d 466, 468, 337 N.E.2d 85, 89 (1975), affirmed without discussion of this point, 64 Ill.2d 532, 1 Ill.Dec. 373, 356 N.E.2d 561 (1976); *People* ex rel. *Hamer* v. *Bd. of Education*, 22 Ill.App.3d 130, 136, 316 N.E.2d 820, 826 (1974), appeal denied, 57 Ill.2d 609 (1975); *Delis* v. *Sepsis*, 9 Ill.App.3d 217, 222, 292 N.E.2d 138, 142–43 (1972), overruled on another point in *Costello* v. *Capital Cities Communications*, 125 Ill.2d 402, 415–16, 126 Ill.Dec. 919, 924–25, 532 N.E.2d 790, 796 (1988);

Zamouski v. *Gerrard*, 1 Ill.App.3d 890, 898, 275 N.E.2d 429, 434 (1971); *Richards* v. *Leimbacher*, 131 Ill.App.2d 775, 780, 267 N.E.2d 523, 526, appeal denied, 47 Ill.2d 592 (1971); *Bauscher* v. *City of Freeport*, 103 Ill.App.2d 372, 376, 243 N.E.2d 650, 652 (1968).

There is nothing to the contrary in any of the cases from this Court which Petitioner cites. In *First English I*, the Court specifically distinguished cases where takings claims had been dismissed for failure to withstand demurrer. 482 U.S., at 311, distinguishing *MacDonald*, *supra*, and *Agins*, *supra*. The remaining Supreme Court cases cited in the petition do not involve dismissals at the pleadings stage, *Lucas* v. *South Carolina Coastal Council*, 505 U.S. __, __, 112 S.Ct. 2886, 2890, 120 L.Ed.2d 798, 808–09 (1992); *Hodel* v. *Irving*, 481 U.S. 704, 710 (1987); *Penn Central Transp. Co.* v. *New York City*, 438 U.S. 104, 119–20, rehearing denied, 439 US. 883 (1978); *Armstrong* v. *United States*, 364 U.S. 40, 45, n. 3 (1960), and one of them actually held that there was *no* compensable taking. *Penn Central Transp. Co.*, *supra*, 438 U.S., at 138.

In sum, Petitioner's central thesis is directly contrary to well established case law emanating from this Court. It presents no unsettled federal question.

ii. *Dismissal On The Pleadings Has No Implications For Any Federal Right To A Jury Trial.*

Petitioner intimates that dismissal of his suit on the pleadings wrongly deprived him of his right to a jury trial on a takings claim. Pet. for Cert. 26. There are two reasons why this fails to present a federal question.

First, it has long been settled that the federal constitution grants no right to a jury trial in condemnation cases. *United States* v. *Reynolds*, 397 U.S. 14, 18 (1970); see also *Atlas Roofing Co.* v. *Occupational Safety Comm'n*, 430 U.S. 442, 458 (1977); *Dohany* v. *Rogers*, 281 U.S. 362, 369 (1930); *Crane* v. *Hahlo*, 258 U.S. 142, 147 (1922); *Backus* v. *Fort Street Union Depot Co.*, 169 U.S. 557, 569 (1898); *Bauman* v. *Ross*, 167 U.S. 548, 593 (1897); *Long Island Water Supply Co.* v. *Brooklyn*, 166 U.S. 685, 694–695 (1897); *Chicago, Burlington &c. R'd* v. *Chicago*, 166 U.S. 226, 244–45 (1897); *United States* v. *Jones*, 109 U.S. 513, 519 (1883).

Second, there is no infringement of any constitutional right to a jury trial where an insufficient or defective complaint is dismissed. *Belmar*, *supra*, 34 Ill.2d 544, 549, 216 N.E.2d 788, 792; *Harvey* v. *Brewer*, *supra*, 166 Ill.App.3d 253, 259, 116 Ill.Dec. 724, 728, 519 N.E.2d 939, 943; *Harvey* v. *Mackay*, *supra*, 109 Ill.App.3d 582, 589, 65 Ill.Dec. 167, 172, 440 N.E.2d 1022, 1027; *Delis*, *supra*, 9 Ill.App.3d 217, 222, 292 N.E.2d 138, 142–43.

iii. *Such Dismissal Does Not Offend The Due Process Clause.*

Petitioner seems to claim that dismissal of his suit on the pleadings improperly deprived him of his right to trial on the merits. Pet. for Cert. 23. If he is claiming a denial of some Fourteenth Amendment right, then he is mistaken. There is no infringement of any Due Process Clause right to trial where an insufficient or defective complaint is dismissed. *Harvey* v. *Mackay*, *supra*, 109 Ill.App.3d 582, 589, 65 Ill.Dec. 167, 172, 440 N.E.2d 1022, 1027; *Delis* v. *Sepsis*, *supra*, 9 Ill.App.3d 217, 222, 292 N.E.2d 138, 142–43.

b. *No Unsettled Federal Question Is Presented By The Rule Requiring Submission Of Proposed Amendments Prior To Oral Argument On Appeal.*

i. *The Petition Fails To Show That The Rule As Applied Offends The Takings Clause.*

Petitioner also criticizes the Court of Appeal's refusal to permit him to file a third amended complaint. Pet. for Cert. 16. It is unclear whether he contends that this infringes upon his rights under the Takings Clause.

If so, the petition fails to show any such infringement. That is because Petitioner never explains what amendments he would make to his pleading if given an opportunity to do so. It is thus impossible to determine whether a further amended pleading would show any violation of rights protected by the Takings Clause. Accordingly, the petition fails to make any showing that the Court of Appeal deprived Petitioner of rights under the Takings Clause by denying him leave to file yet another pleading. *Louis. & Nash. R. R.* v. *Higdon*, 234 U.S. 592, 596, 598–600 (1914); *Deasey* v. *City of Chicago*, *supra*, 412 Ill. 151, 156–57, 105 N.E.2d 727, 729–30.

ii. *It Is Settled That The Rule As Applied Does Not Offend The Due Process Clause.*

If Petitioner is claiming that the denial of leave to amend presents a federal question under the Due Process Clause, then he is wrong on that score as well.

Petitioner proceeds from the mistaken premise that the Court of Appeal denied him any opportunity to amend. Pet. for Cert. 16. That most assuredly was *not* the case.

The true facts are as follows: The trial court permitted Petitioner to file a total of three different pleadings during a period extending from 1988 through 1991. The Court of Appeal would have considered any additional proposed amendments, as long as Petitioner submitted them prior to oral argument on appeal, which took place in 1993. The Court of Appeal denied Petitioner further leave to amend *only when he failed to offer any proposed amendments in a timely fashion*. Pet. for Cert. 9–11, 16; App. to Pet. for Cert. 10–11, 12, 13–14.

On strikingly similar facts, this Court long ago held that such a denial of leave to amend is *not* inconsistent with the Fourteenth Amendment's Due Process Clause. *Roller* v. *Murray*, 234 U.S. 738, 745–46 (1914); accord, *Deasey* v. *City of Chicago*, *supra*, 412 Ill. 151, 156–57, 105 N.E.2d 727, 729–30. The Court of Appeal's denial of leave to amend thus raises no *unsettled* federal question vis-à-vis the Due Process Clause. Instead, the question has already been settled contrary to Petitioner's apparent contention.[1]

iii. *The Rule On Its Face Does Not Offend The Due Process Clause.*

The Court of Appeal employed the following rule of California appellate procedure in denying Petitioner leave to amend: To overturn a trial court ruling denying leave to

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[1] It is perhaps significant that Petitioner *never* submitted *any* proposed amendments to the Court of Appeal, *timely or otherwise*. Moreover, his certiorari petition contains none.

amend following the sustaining of a demurrer, the pleader must show abuse of discretion by explaining how his pleading can be successfully amended. Moreover, his explanation must come some time prior to oral argument on appeal. App. to Pet. for Cert. 10, 13,

This simple procedural rule is not inimical to the Due Process Clause. After all, as this Court held over 45 years ago, "Oral argument on appeal is not an essential ingredient of due process . . . ." *Price* v. *Johnston*, 334 U.S. 266, 286 (1948), criticized on another point in *McCleskey* v. *Zant*, 499 U.S. __, __, 111 S.Ct. 1454, 1464, 113 L.Ed.2d 517, 537, rehearing denied, __ U.S. __, 111 S.Ct. 2841, 115 L.Ed.2d 1010 (1991).

Consistent with that pronouncement, numerous lower courts have held that the Due Process Clause does *not* require oral argument on appeal. See, *e.g.*, *Magnesium Casting Co.* v. *Hoban*, 401 F.2d 516, 518 (CA1 1968), cert. denied, 393 U.S. 1065 (1969); *N. L. R. B.* v. *Local No. 42, Int. Ass'n of Heat & F. I. & A. Wkrs.*, 476 F.2d 265, 276 (CA3 1973) (op'n sur pet'n for rehearing in banc); *George W. B. Bryson & Co., Ltd.* v. *Norton Lilly & Co., Inc.*, 502 F.2d 1045, 1050 (CA5 1974); *Chamberlain* v. *Ericksen*, 744 F.2d 628, 630 (CA8 1984), cert. denied, 470 U.S. 1008 (1985); *Toquero* v. *I.N.S.*, 956 F.2d 193, 196, n. 45 (CA9 1992); *United States* v. *Marines*, 535 F.2d 552, 556 (CA10 1976); *Shaw* v. *Boney*, 695 F.2d 528, 531 (CA11 1983) (*per curiam*); *People* v. *Ashley*, 59 Cal.2d 339, 361, 29 Cal.Rptr. 16, 29, 379 P.2d 496, 509, cert. denied *sub nom. Ashley* v. *California*, 374 U.S. 819 (1963); *Bentley* v. *State*, 415 So.2d 849, 850 (Fla.App. 1982); *State* v. *Warner*, 594 So.2d 397, 402 (La.App. 1991); *In re: Carl G. Smith*, 145 Me. 174, 179, 74 A.2d

225, 228 (1950); *Ad + Soil, Inc.* v. *County Comm'rs*, 307 Md. 307, 318–19, 513 A.2d 893, 899 (1986); *Sabatinelli* v. *Travelers Ins. Co.*, 369 Mass. 674, 677–78, 341 N.E.2d 910, 911 (1976); *Moore* v. *Spangler*, 401 Mich. 360, 369–70, 258 N.W.2d 34, 37–38 (1977); *State* v. *Smith*, 199 Neb. 368, 373, 259 N.W.2d 16, 18 (1977); *State* v. *Lewis*, 104 N.M. 218, 220–21, 719 P.2d 445, 447–48 (App. 1986); *State* ex rel. *Reed* v. *Schwab*, 287 Ore. 411, 414–16, 600 P.2d 387, 390, 24 A.L.R.4th 422, 425–27 (1979), cert. denied *sub nom. Reed* v. *Schwab*, 444 U.S. 1088, rehearing denied, 445 U.S. 955 (1980); *Webb* v. *State*, 533 S.W.2d 780, 784–85 (Tex.Crim. 1976); *State* v. *Smith*, 139 Vt. 653, 427 A.2d 383 (1981).

It unavoidably follows that California courts do *not* run afoul of the Due Process Clause by requiring appellants to submit proposed pleading amendments prior to oral argument. Petitioner's facial challenge to that requirement raises no federal question regarding the Due Process Clause.

c. *No Federal Question Is Presented By The Rule Requiring A Pleader To Explain Allegations In Amended Pleadings That Contradict Admissions In Prior Pleadings.*

i. *The Rule Is A State Law Matter Over Which This Court Has No Jurisdiction.*

Petitioner seems to contend that the Court of Appeal erred by disregarding one of the allegations in his second amended complaint. In that allegation, Petitioner pleaded that Respondents had officially closed and abandoned Gardner Avenue, which is a street adjoining his property. Pet. for Cert. 16, 20–21, 22.

The Court of Appeal disregarded that allegation only because it was an obvious sham. It directly contradicted a fatal admission contained in both Petitioner's original and first amended pleadings.

To be specific, both those prior pleadings explicitly alleged that Respondents had taken " . . . no action to officially close Gardner Avenue, which is still a public street which fronts the subject property . . . ." In his original pleading, Petitioner even affirmed the truth of that allegation under penalty of perjury. Pet. for Cert. 7–8, 17–18; App. to Pet. for Cert. 11–12, text & n. 2.

In opting to disregard the contradictory allegation in Petitioner's second amended complaint, the Court of Appeal relied on an elementary rule of California pleading practice: Where a verified complaint contains allegations destructive of a cause of action, the defect cannot be cured in subsequently filed pleadings by simply omitting the allegations without explanation. App. to Pet. for Cert. 11–12. Petitioner's objection to the Court of Appeal's application of this California pleading principle does *not* raise a federal question appropriate for review by this Court. *Agins* v. *Tiburon*, *supra*, 447 U.S. 255, 259–60, n. 6; cf. *MacDonald, Sommer & Frates* v. *Yolo County*, *supra*, 477 U.S. 340, 352, n. 8, ¶ 1.

ii. *In Any Event, The Petition's So-Called "Explanation" Is Tardy And Inadequate.*

On page 22 of his petition, Petitioner claims to explain the inconsistency in his allegations. His explanation comes too late: It should have been presented in the state courts.

Moreover, the so-called "explanation" does nothing to resolve Petitioner's inconsistency in pleading. In his first two pleadings, Petitioner alleged that Gardner Avenue had *not* been closed. In his second amended complaint, he alleged that Gardner Avenue *was* officially closed and abandoned. Pet. for Cert. 7–8, 17–18; App. to Pet. for Cert., 11–12, text & n. 2.

Petitioner's purported "explanation" is that Gardner Avenue was opened to every member of the public as a street except for him. Pet. for Cert. 22. This obviously does *not* explain the allegation in Petitioner's second amended complaint, though. Instead, *it actually confesses the allegation's falsity*. If anything, this shows the wisdom behind the California pleading rule which led the Court of Appeal to ignore the contradictory allegations in Petitioner's second amended complaint.[2]

C. *The Dismissal Of Petitioner's Suit Implicates No Decisional Conflict Between California And Other Jurisdictions.*

Petitioner also seems to argue that a conflict of authority exists between California and other jurisdictions with respect to takings jurisprudence. As explained below, no such conflict exists, much less one that can be resolved by granting certiorari in the instant case.

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[2] Not unsurprisingly, Petitioner's "explanation" is itself far-fetched. As Respondents understand it, Petitioner is claiming that Gardner Avenue is open as a street to every member of the public except for him. Pet. for Cert. 22. Petitioner cannot seriously suggest that Respondents have set up full-time roadblocks on Gardner Avenue to prevent him and him alone from passing.

1. *There Is No Conflict Between California And South Carolina.*

a. *Both States Employ The Same Rules Of Pleading.*

Petitioner seems to imply that South Carolina state courts treat inverse condemnation suits more favorably than California courts treated his suit. Pet. for Cert. 15, n. 16, 24, n. 17. He is wrong. South Carolina courts employ the same pleading rules which California used in the instant case.

For example, South Carolina courts, like their California counterparts, have not hesitated when appropriate to dismiss inverse condemnation suits via demurrer at the pleadings stage. See, *e.g.*, *Brabham* v. *City of Sumter*, 275 S.C. 597, 274 S.E.2d 297 (1981); *Brown* v. *School Dist. of Greenville Cty.*, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968); *Gasque* v. *Town of Conway*, 194 S.C. 15, 18–25, 8 S.E.2d 871, 872–75 (1940), overruled on another point in *McCall* v. *Batson*, 285 S.C. 243, 249, 329 S.E.2d 741, 744 (1985); *McGann* v. *Mungo*, 287 S.C. 561, 571–73, 340 S.E.2d 154, 159–60 (App. 1986). Also, appellate courts in South Carolina, like those in California, require an appellant to show abuse of discretion before they will reverse a trial court's refusal to permit amendment after sustaining a demurrer to a defective pleading. *Vaughan* v. *Kalvas*, 288 S.C. 358, 362–63, 342 S.E.2d 617, 619–20 (App. 1986). And South Carolina joins California in frowning on pleadings amendments which seek to cure fatal defects by directly contradicting prior allegations that defeated the plaintiff's cause of action. *Whaley* v. *Lawton*, 57 S.C. 256, 264–67, 35 S.E. 558, 561–62 (1900); *Coker* v. *Monaghan Mills*, 119 F. 706, 708–09 (C.C.S.C. 1902).

(Although some of the foregoing cases were decided prior to a mid-1985 recodification of South Carolina's pleading rules, they remain good authority, inasmuch as one of the new rules replaced and performs the same function as the old pleading rules regarding demurrers. *Brown* v. *Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987); *New Hanover County D.S.S.* v. *Gore*, 288 S.C. 138, 139, n. 1, 341 S.E.2d 631, 632, n. 1 (1986); *McGann* v. *Mungo*, *supra*, 287 S.C., at 571, n. 1, 340 S.E.2d, at 159.)

b. *There Is No Conflict In The Treatment Given On Remand To The* First English *And* Lucas *Cases.*

As "evidence" of a supposed takings jurisprudence conflict between California and South Carolina, Petitioner points to the contrasting results which state court remands yielded in the *First English* and *Lucas* cases. Pet. for Cert. 15, n. 16, 24, n. 17. Petitioner's analysis is faulty, however. The differing results were the product of factual and procedural distinctions between the two cases, *not* the product of disparate legal standards between the two states.

Lucas v. *South Carolina Coastal Council*, *supra*, 505 U.S. __, 112 S.Ct. 2886, 120 L.Ed.2d 798, reached this Court following a bench trial. The trial court had found that the subject land use regulation rendered the plaintiff's land valueless, since it deprived him of any reasonable economic use of his property. This Court held that such a finding required the state to pay just compensation for a taking, unless the regulation could be sustained on the basis of principles of state property and nuisance law. The Court remanded the case to South Carolina to determine whether such state law principles authorized the regulation in question.

505 U.S., at __. __, __, __, 112 S.Ct., at 2889–90, 2892, 2896, 2899–2902, 120 L.Ed.2d, at 807–09, 811, 815–16, 820–23.

This highly limited remand posed little difficulty for the South Carolina Supreme Court. It was unable to identify any common-law basis for upholding the pertinent regulation. It accordingly remanded the case for a trial to determine the amount of damages. *Lucas* v. *South Carolina Coastal Council*, 424 S.E.2d 484, 486 (S.C. 1992).

In stark contrast, *First English I* came before this Court on the pleadings. At that stage, the California courts had yet to consider whether the subject regulation actually denied the landowner all use of his land. This Court therefore remanded *First English* for determination of that issue, and for a determination as to whether the regulation could be upheld on state common-law principles. *First English I*, *supra*, 482 U.S. 304, 308–13, 321–22.

On remand, the California Court of Appeal closely scrutinized the challenged regulation, as well as a variety of related county ordinances affecting the landowner's property. The Court of Appeal held that the subject regulation did not effect an uncompensated taking, because (1) it did *not* deny the landowner all use of its property, (2) it was justifiable as a temporary moratorium, and (3) its enactment was motivated by compelling public safety concerns. *First English II*, *supra*, 210 Cal.App.3d 1353, 1356, 1365–74, 258 Cal.Rptr. 893, 894, 901–07.

Significantly, the regulation challenged in *First English* was promulgated for the specific purpose of preventing human death and injury. *Id.*, at 1370, 258 Cal.Rptr., at

904. No remotely comparable concern was connected to the land use regulation struck down in *Lucas*. See 503 U.S., at __-__, text & nn. 10–11, 112 S.Ct., at 2896–98, text & nn. 10–11, 120 L.Ed.2d, at 816–19, text & nn. 10–11.

In sum, California and South Carolina courts reached differing results in the *First English* and *Lucas* remands due to marked differences between the cases' challenged regulations and procedural postures. The contrasting dispositions do *not* evidence any conflict in authority between the two states.

2. *There Is No Conflict Between California And The Ninth Circuit.*

a. *Both Jurisdictions Rely On The Same Federal Precedents.*

Petitioner next implies that a conflict of authority exists, with respect to takings cases, between the California state court system and the Ninth Circuit Court of Appeals. Pet. for Cert. 25, n. 18. Not so. California takings jurisprudence often relies on federal precedent. *Gilbert* v. *State of California*, 218 Cal.App.3d 234, 253–54, 266 Cal.Rptr. 891, 902–03 (1990). Obviously that is the same body of law which guides the Ninth Circuit.

b. *The Dismissal Of Petitioner's Suit Does Not Conflict With The* Golden Gate *Decision.*

Petitioner seems to believe that the disposition of his case is inconsistent with a Ninth Circuit *district court* decision in a case entitled *Golden Gate Hotel Assn.* v. *City and County of San Francisco*. Pet. for Cert. 27, text & n. 20. Petitioner once again is mistaken.

Although the *Golden Gate* opinion is evidently unpublished, an account of it appears on pages 25 through 28 of the petition. Apparently it involves a challenge to an ordinance which severely restricts the ability of residential hotel owners to convert their property to other uses.

That stands in marked contrast to the regulation Petitioner has attacked in the instant case. Respondents' redevelopment plan neither restricts, diminishes nor in any way limits the uses which Petitioner can lawfully make of his land. App. to Pet. for Cert. 101–11.

The present case and *Golden Gate* are thus readily distinguishable, rather than in conflict. In any event, this Court ordinarily grants certiorari to resolve a conflict between a state court *of last resort* and a federal court *of appeals*, *not* between an *intermediate* state appellate court and a federal *district* court. U.S.Sup.Ct. Rule 10.1(b).

3. *Because No Interjurisdictional Conflict Exists, The Petition Fails To Present Any Equal Protection Questions.*

Petitioner seems to assert that a conflict of inverse condemnation case law between jurisdictions would both violate the Equal Protection Clause and lead to undesirable forum shopping. Pet. for Cert. 24–25, text & nn. 17–18. The instant case fails to present these questions, however. That is because, as noted on pages 23–28 of this brief, the petition fails to show any conflict of authority among lower courts, much less a conflict that can be resolved by granting certiorari in this case.

III. *Certiorari Is Inappropriate, Because The Trial Court's Order Can Be Sustained On Independent State Grounds.*

Review by this Court would be inappropriate even if the petition did present a federal question. That is because the trial court order dismissing Petitioner's suit can be sustained on independent state grounds.

As Petitioner correctly notes, the trial court did *not* rely solely on his failure to plead a cause of action when it dismissed his suit. It also relied on state law precepts such as (1) the statute of limitations, (2) the doctrine of exhaustion of administrative remedies, and (3) principles of res judicata. The Court of Appeal's opinion, on the other hand, fails to address the applicability of any of those state law grounds. Pet. for Cert. 12–13.

This Court should therefore decline review even if it does conclude that the petition raises a significant federal question. Instead, the Court should remand the case to the Court of Appeal to determine whether Petitioner preserved the right to challenge the trial court's application of the various state doctrines and, if so, whether those doctrines provide a state law bar to Petitioner's suit independent of any federal questions. *Paschall* v. *Christie-Stewart, Inc.*, 414 U.S. 100, 100–02 (1973) (*per curiam*), rehearing denied, 414 U.S. 1138 (1974).

CLOSING ARGUMENT

The dismissal of Petitioner's suit does not share the constitutional vice that necessitated reversal in *First English I*. Petitioner's suit was not dismissed in an erroneous belief that temporary takings are *per se* noncompensable.

Instead, his case was dismissed because California courts determined that Respondents' regulation did *not* deprive him of substantially all use of his property. The California courts made this determination after giving Petitioner *four* opportunities during a *five-year* period to plead or state facts showing such a deprivation. *Six* California judges scrutinized Petitioner's pleadings for such facts, and they *unanimously* agreed that there were none.

In examining Petitioner's pleadings, California courts applied common sense rules of pleading that are employed in other jurisdictions as well. It is already settled that those pleading rules are entirely permissible under the Fifth and Fourteenth Amendments.

The plain truth is that Petitioner's case presents no unsettled federal question. Nothing in the constitution requires subjecting this protracted and meritless litigation to further judicial scrutiny.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

DATED: December 17, 1993

Respectfully submitted,

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